

**EMPLOYEE FRAUD IN MALAYSIA: A CASE STUDY**

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**REGISTERED IN THE  
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## **Abstract**

This thesis is a detailed case study about employee fraud in a bank in Malaysia. As this bank is set up by the Government in 1965, the fraud has political implications. This thesis discusses the internal structure of the organisation as well as the political and social climate conducive to fraud and corruption in Malaysia. Two other major financial fraud cases in Malaysia will be discussed as comparative case studies. Fraud and corruption trends in other countries will also be discussed to illustrate that the Malaysian case is not a unique one.

In chapter one, a theoretical framework suitable for the studies of crime in developing countries will be formulated. In Malaysia, the historical development of the country is important.

Chapter two introduces the concepts and definitions of crimes at the workplace, in particular fraud.

Chapter three tries to trace the detailed movements of the funds that were defrauded in the Bumiputra Malaysian Finance Limited (BMF) case. In doing so, they give a good idea of how frauds can occur and how they can be prevented.

Chapter four is an analysis of the BMF case. The chapter is divided into two sections. The first section is the micro-analysis which deals with the structure of the organisation that is problematic. The second section is the macro-analysis which deals with the wider political and social structure that is problematic.

Chapter five is on the comparative case studies which tries to establish the trend of how public organisations can be defrauded in Malaysia. A comparison with other countries will also show that the Malaysian case is not a unique one.

Chapter six deals with the overall commercial crime scenario in Malaysia.

Chapter seven tries to give some suggestions on combating and preventing fraud.

The thesis is concluded with chapter eight.



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FOR MY PARENTS, UNIVERSITI UTARA MALAYSIA AND  
THOSE WHO DARE TO STAND UP AGAINST  
FRAUD AND CORRUPTION

### **Acknowledgements**

A number of people have assisted me during the course of this thesis. First, I wish to thank my supervisors, Prof. Paul Rock (Sociology Department) and Prof. Leonard Leigh (Law Department), for their valuable guidance and helpful comments on earlier drafts. I would also like to thank all the people whom I have interviewed and who have helped me one way or another by giving me valuable insight, information and material for my thesis. I am grateful to Looi Chin and Azadeh Medaglia who, in the difficult days, offered me encouragement and support. Thanks also go to my coursemates, friends and staff at the LSE for their lively academic discussions and encouragement. Finally, I owe a debt of gratitude to my sponsor, Universiti Utara Malaysia, which made this study possible.

### **Abbreviations**

BBMB	Bank Bumiputra Malaysia Berhad, the parent bank
bil.	billion
BMF	Bumiputra Malaysia Finance Limited
CHL	Carrian Holdings Limited
CIL	Carrian Investments Limited
EIL	Eda Investments Limited
HK\$	Hong Kong dollars
ISA	Internal Security Act
M\$	Malaysian dollars
mil.	million
OSA	Official Secrets Act
PIL	Plessey Investments Limited
S\$	Singapore dollars
UMNO	United Malays National Organisation, the ruling coalition party
US\$	American dollars

By LAT

*Scenes of Malaysian Life*

IDENTIFICATION  
PARADE



## Introduction And Methodology

This thesis is a detailed case study of employee fraud in a Malaysian financial institution set up in Hong Kong i.e. the Bumiputra Malaysia Finance Limited (BMF). Its parent bank is the Bank Bumiputra Malaysia Berhad (BBMB) in Malaysia. However, because this bank was set up by the Government in 1965, the fraud had political implications. This thesis tries to piece together the complicated BMF case in order to show how fraud offences can be committed in financial institutions. In the BMF case, M\$2.5 bil. (approximately £0.625 bil.<sup>1</sup>) were lost. Two other major financial fraud cases which took place in Malaysia will also be discussed as comparative case studies to establish a trend of how corrupt politicians and elite members of society defraud institutions set up by the Government. This will entail an analysis into the internal structure of the organisations as well as the political and social climate conducive to fraud and corruption in Malaysia. Finally, the pattern of fraud and corruption in Malaysia will be compared with those in other countries of different social and political systems, and economic situations.

Chapter one focuses on theories of crime in developing countries (with specific reference to Malaysia). This chapter tries to formulate a theoretical framework suitable for the studies of crime in developing countries. In Malaysia, the historical development of the country and its multicultural nature are important factors.

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<sup>1</sup>1994 exchange rate.



Chapter 2 deals with the concepts and definitions of crimes at the workplace (in particular fraud).

Chapter 3 is on the BMF case. This chapter tries to trace the detailed movements of the funds that were defrauded. This will give a good idea of how frauds can take place and how they can be prevented.

Chapter 4 is an analysis of the BMF case. This chapter is divided into two sections. The first section is the micro-analysis which deals with the structure of the organisation that is problematic. The second section is the macro-analysis which deals with the wider political and social structures in Malaysia which are problematic.

Chapter 5 deals with the comparative case studies. Two cases are chosen to establish the trend of how public organisations can be defrauded. This chapter also tries to compare the fraud and corruption trends in Malaysia with those of other countries of different social and political systems, and economic situation.

Chapter 6 is on the general commercial crime rate in Malaysia. This chapter deals with the overall commercial crime scenario in Malaysia.

Chapter 7 is a discussion of possible ways of combating and preventing fraud.

Chapter 8 is the conclusion which summarizes the important points in the thesis.

## **Methodology**

When I first made the decision to look into the BMF case for my thesis, I did not expect to stumble on any

political involvement. However, I was wrong. The BMF case was steeped in political involvement and that was the biggest obstacle to my fieldwork. I had to go back to Malaysia twice to collect my data. The first time round, I managed to interview a few people who were important for my thesis. Some allowed me to mention their names in my thesis. A couple of them gave me their opinions and advice, but they did not want me to mention their names at all. The police and the officers of Bank Bumiputra were not helpful at all, especially when they realised I was using the BMF case in my research. I could not even obtain the data on overall fraud or commercial crime in Malaysia although such data could be translated into public information. My second obstacle to collecting data was the Official Secrets Act which will be explained in chapters 3 and 4. Officers in the police headquarters were afraid to breach the Act. One police officer I contacted told me not to tell anyone I had spoken to him. I was introduced to him through a colleague of mine. At that time, I decided to drop the chapter on overall fraud or commercial crime in Malaysia. I came back to England and started writing with whatever material I had, but I realised that it was just not enough for a thesis. I decided to go back to Malaysia again. This time I was also going back to Malaysia to attend a symposium on economic crime where all the important figures of the different law enforcement agencies would also be attending. I was lucky to have a coursemate who introduced me to one of the organisers of the symposium who took pity on me and allowed me to attend free of charge. At the symposium, I saw the head of the

Commercial Crime Division at the police headquarters, the Director of the Anti-corruption Agency and a few officers from the central bank. I took the opportunity to introduce myself and arranged some interviews with them.

The Head of the Commercial Crime Division instructed one of his officers to help me. The data I wanted were actually general data which could be published in the newspapers.

At the central bank, I obtained data on fraud cases in financial institutions in Malaysia. Before giving me the data, I was passed from one department to another. My guess is that nobody wanted to be responsible for releasing the data to me. I was fortunate to get my sponsor i.e. my University back home to intervene on my behalf. My Vice-chancellor had to write a letter specifying what I was doing and what I needed to the Manager of the Public Affairs Unit of the central bank. A carbon copy was also sent to the Deputy-Governor of the central bank who happened to be an adjunct professor at my University at that time. Finally, I was sent some data on fraud in the financial institutions and a couple of working papers.

The Anti-corruption Agency was more generous. I saw the Director-General himself. He gave me very up-to-date data and all the papers he had presented.

Other people I managed to interview were two persons involved in the Committee of Enquiry into the BMF case. One of them was the leader of the Committee.

I also managed to interview the leader of the opposition party (Democratic Action Party), Lim Kit Siang.

He wrote and published quite extensively his views on the BMF case as well as the political and social environment in Malaysia. However, I was quite disappointed with the interview because he did not want to say much. He asked me to refer to his books instead. My guess is that after being put behind bars during the Internal Security Act clampdown in the 1980s which will be explained in chapter 4, he has toned down a lot.

Another person who wrote extensively on the BMF case and the political and social environment of Malaysia is Chandra Muzaffar. He was very kind in giving me an interview despite his tight schedule. He was, at the time of the BMF scandal, the leader of the pressure group, Aliran. Aliran is an informal movement for freedom, justice and solidarity. Aliran staged a protest for a Royal Commission to be formed for the BMF investigation. Aliran also protested when the findings of the Committee of Enquiry were not released to the public.

The other group which protested at the height of the BMF scandal was the Consumer Association of Penang. I managed to speak to one of its officers. The Association was also kind enough to allow me to use their reference library where they kept all the local newspapers clippings on the BMF case.

I also spoke to two officers from the head office of Bank Bumiputra Malaysia Berhad. It was an informal discussion. I started by asking them about loans procedures. But, when I touched on the BMF case, they refused to discuss matters further.

There are a few people whom I have interviewed who do not want their identity revealed. I am very grateful to them and I respect their wishes.

Finally, one person who has given me a lot of information and in-sights is a British reporter, Kevin Cahill. I managed to get in touch with him through his campaign in England to free Lorrain Osman, one of the BMF directors who was involved in the scandal. By chance, one of my supervisors was sent a pamphlet on this campaign and he passed it to me. I had two long interviews with him and he had kindly given me all the information he had.

Lastly, I tried to interview Lorrain Osman himself, but was turned down by the Brixton Prison authority. Please see Appendix III for a copy of the letter from the authority.

When I wrote to the people I wanted to interview, I sent them two introductory letters; one from my supervisors and one from my sponsor. I also enclosed a self-addressed envelope and a very short form for them to fill in to state whether I could see them and also their contact number if they permitted me to do so, so that I could ring them to arrange the time and place (see Appendix IV). This form was important as it would allow me the freedom to make the appointment at the time convenient to me as well as to the interviewees, especially if they were from another town. I could then arrange to interview all the people from the same town within a particular week.

Besides the people I have interviewed, I also managed to meet a few people who were kind enough to send me information which was relevant to my thesis, for example, an

officer from the Securities and Futures Commission in Hong Kong who had been sending me the latest newspapers clippings of the BMF trials in Hong Kong, Dr. Jon Vagg who recommended some books to me on the BMF case, librarians from my university in Malaysia who helped me to locate the investigation reports on the cases I needed for my research and colleagues of mine who sent them to me. I used the library extensively during my fieldwork. The librarians also helped me to get local seminar papers and books written by local authors.

For my chapter on general commercial crime in Malaysia, I borrowed Simon Field's theory. His is the only theory which briefly mentions fraud although it was generally on property crime. I confirmed with him whether I could use his theory to compare with my data. He said he could not see the reason for not doing so.

Finally, I would like to say that for my research, I was lucky enough to meet the right people at the right time. Research methods formulated by social researchers were good guides to me, but ultimately it was up to me to grab whatever opportunities that presented themselves at that time. If not, I had to try to create my own opportunities in whatever ways I could. I am glad I have been lucky so far.

# The London School of Economics and Political Science



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26 October 1992

The Governor  
HM Prison Brixton  
Jebb Avenue  
London SW2

Dear Sir,

I am a lecturer at the Northern University of Malaysia currently studying at the London School of Economics as a graduate student under the supervisions of Prof. Paul Rock and Prof. Leonard Leigh. My research focuses on the history of the Bumiputra Malaysia Finance Limited and as you know, one of your current inmates, Lorrain Esme Osman, played a key role. I have written to Mr. Osman and spoken to his legal advisor and I understand he may be prepared to see me. If that is so, it would greatly assist my research work if I could bring in a tape recorder. I would be very grateful if you could give me permission to do so.

Prof. Rock or Prof. Leigh would be willing to clarify the matter further if there is a need to do so.

Thanking you in advance for your kind consideration.

Yours faithfully,

(Yik Koon Teh).

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The London School of Economics is a School of the University of London. It is a charity and is incorporated in England as a company limited by guarantee under the Companies Acts (Reg. No. 70527)

## Appendix I

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Brixton  
P.O. Box 369  
Jebb Avenue  
London SW2 5XF  
Telephone 081-674 9811 ext 344  
Fax 081-674 6128



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Professor Rock  
The London School of Economics  
& Political Science  
Houghton Street  
LONDON WC2A 2AE

Your reference

Our reference

Date 28.10.92

---

Dear Professor Rock

The Governor has asked me to reply on his behalf to a letter he has received from one of your students Yik Koon Teh, a copy of which is attached for ease of reference.

Before considering this request it would be helpful to have clarification in particular about how discussions might relate to Mr Osman's outstanding case and any possible prejudice to legal action.

Please do not hesitate to contact me should you wish to discuss this matter.

Yours sincerely

I A Stewart GIV  
Head of Residential

cc Yik Koon Keh

Appendix II



HM Prison  
Brixton  
P.O. Box 369  
Jebb Avenue  
London SW2 5XF  
Telephone 081-674 9811  
Fax 081-674 6128



---

Professor Paul Rock  
Director of the Mannheim Centre  
London School of Economics &  
Political Science  
Houghton Street  
London WC2A 2AE

Your reference

Our reference AGC/JL

Date 17 December 1992

---

Dear Professor Rock

Ms YIK KOON TEH

I am replying to your letter of 3 December to Mr Kitteridge.

Following your letter of 4 November, I asked Miss Stewart to confirm that there would be no legal objection from an official perspective to the interview which had been requested. The initial legal opinion which we received was not enthusiastic about the proposal. It was this interim opinion which was fed back to Ms Teh. Miss Stewart was pursuing the matter with our advisers and for this reason delayed letting you have a final response.

You will be aware that Mr Osman's legal objections to extradition have been exhausted and he has now returned to Hong Kong. I regret that we were not able to give you a positive response prior to his departure.

I hope that we shall be able to give assistance to some of your students in the future.

Yours sincerely

Dr A.G COYLE  
Governor

Appendix III

Appendix IV

Teh Yik Koon  
(address)

Dear Sir/Madam,

I will / will not be able to grant you an interview.

My telephone number is \_\_\_\_\_.

Yours faithfully,

\_\_\_\_\_  
( \_\_\_\_\_ ).

## **Chapter 1**

### **Theories Of Crime In Developing Countries**

#### **(With Specific Reference To Malaysia)**

This chapter will discuss some theories on crime in developing countries and whether these theories are relevant to the situation in Malaysia. It should be pointed out that the literature on development hardly ever mentions the impact it has on crime. The crime issue has been left out as if it were not a problem for developing countries. Literature on development and crime in Malaysia is practically non-existent. Thus, I have to rely on existing literature on crime in developing countries in general to form my own research framework for the case of Malaysia. This is an important starting point for any research on crime in Malaysia. I will discuss the theory of crime in developing countries propounded by Clinard and Abbott in 1973 as a starting point. This theory is lacking in many ways as a model for the study of crime in developing countries. A critique of this theory will highlight other important factors that must be considered. Other theories will then be compared with this theory and finally, I hope to propose a framework suitable for studying crime in Malaysia.

#### **1. The theory of Clinard and Abbott**

Clinard and Abbott (1973) proposed that the developing countries were undergoing processes of development similar to those experienced by developed countries like the United

States and those of Europe. The types of crime in the less developed countries were said to be at a stage that reflected those of England, the United States and other developed societies at the time of rapid industrialization, urbanization and development in the early nineteenth century (Clinard & Abbott, 1973; 4). The two writers equated industrialization, urbanization and development with 'modernization'; "the combination of technological mastery and the concomitant, to a certain degree resultant, expansion of human horizons marks a period in human development generally termed 'modernization'" (p.7). The growth of industrialization was said to affect the direction and nature of urbanization and both, in turn would affect the growth of modernization. Industrialization was said to be concentrated in the cities. The cities became an impetus for migration of the population, especially the youth, from rural area in response to the economic and social stimulus. However, the ability to generate urban employment was unable to meet the influx of migration. Continual unemployment forced destitute migrants to gravitate towards the vast physically depressed living area which ultimately became the slum area of the cities.

The two writers argued that the key to wealth and status was through education. Unfortunately, only a small percentage of the population could expect to have access to educational facilities. The writers concluded that unemployment and the emphasis on education with the relatively few possibilities of success gave rise to social structural conditions that created deep feelings of

alienation in many youths (p.8). These feelings were reinforced by a decline in their relationship with the extended family. Thus, isolated, friendless and frustrated youth in the city might get support from new friends in a delinquent group.

The urban crime rate was more significant than that in the rural area. Generally, the crimes were more strongly related to property crimes than crimes against the person. This was due to increasing demand for prestige articles or articles that lent a sense of modernization. The offenders were usually young males in their twenties living in the slum area. Most of their property crimes were committed by the poor against the poor and the stolen articles were of little monetary value. Other major offences in the developing countries were vagrancy, black market offences, illegal begging and sex crimes.

The writers supported their observations with a study carried out in Uganda. They found that offenders had a greater tendency to view their political system as 'corrupt' and that they had fewer opportunities for advancement. Thus, their only recourse was to illegal means. Their criminal behaviour was learnt from "bad company". This "bad company" furnishes an alternate source of support in place of the family unit which was severely disrupted by the effects of urbanization.

However, there was increasing concern that crimes involving violence were rising in developing countries. There was an increase in the use of weapons like knives and firearms in robbery. The writers argued that armed robbery

was learnt in prison. Thus, the prison was seen as a breeding ground for more violent offences.

The writers concluded that the widespread increase in crime in developing countries as they passed through the stages of modernization indicated that similar crime-producing conditions were taking place throughout the world. This view was supported by the United Nation Congress on the Prevention of Crime and the Treatment of Offenders in 1970 which concluded that, "As any country begins to open up, outgrows its traditionalism and responds to outside influences or new ideas by modernizing, industrializing and concentrating people in certain areas, its people and particularly its younger generation seize the many new opportunities. And in doing so, a small, but progressively increasing number of them succumb to temptations and seek illegal satisfaction through crime" (p.11).

The writers were careful not to blame the increase in the crime rate in developing countries solely on poverty and unemployment. They stressed that norms permitting and even sanctioning acts of theft must generally have been incorporated into a person's life organisation by intimate contact with others who transmitted deviant cultural, neighbourhood and occupational norms (p.176). They also suggested that persons who were employed might have greater opportunities for crime and that there was an increase in white collar crime among middle and upper class politicians, Government officials, businessmen and lawyers (p.140). However, there were no statistics to support their argument as the power elites were believed to be usually beyond the

law and were seldom prosecuted or imprisoned.

The two writers believed that Merton's concept of anomie i.e. the clash between institutional means and cultural goals in the provision of access to a given success goal by legitimate means was applicable only as a partial explanation of some of the social forces leading to increased crime in developing countries (p.176). Relative deprivation theory which correlated those who felt they were at a disadvantage with the crime rate in developing countries was another possible explanation. The theory of differential opportunity which had been developed to explain the growth of delinquent gang behaviour among urban youth was another theory which should be considered for the increase in crime rate in the developing countries. According to Cloward and Ohlin, delinquent gang behaviour grew wherever legitimate means to the attainment of the success goals, such as economic and higher educational opportunities were blocked (p.177). The lower class youths had internalised the emphasis on conventional goals, but they faced limitations on legitimate access to these goals. Thus, many reacted to these restrictions on opportunities by adopting illegal means such as crime to attain their goals; their choice depending on the means available (p.178). This theory incorporated Sutherland's theory of differential association. The individual must have the opportunity to acquire the techniques to commit the offence and be able to rationalise his actions. The writers believed that the theory of differential association fitted the facts about criminal behaviour better than any other theories (p.193);

"Extensive worldwide evidence now exists to support the position that criminal behaviour is learned. Criminal norms are acquired primarily by group association and participation in deviant subcultures such as those existing in the slums, in youth gangs and in certain occupations" (p.261).

The writers concluded that as development continues, the levelling off of certain crimes was to be expected, for example, prostitution, begging and political crime. Developing countries were said to be facing a dilemma. On the one hand, they must plan for development and on the other, they must recognise the price they would have to pay for development (p.263). The writers argued that unfortunately, most developing countries believed that by improving general socio-economic conditions, crime would automatically be eliminated, thus neglecting crime control planning.

## **2. Critique of the theory of Clinard and Abbott**

The two writers have presented a general theory of crime and criminal behaviour and not a specific theory for developing countries. Their theory has neglected wider issues which have important effects on a particular developing country, for example, colonialism, pluralism and the economic policies of the particular country. These factors no doubt would affect the crime scenario of a particular country. They imported theories of crime developed for Western society during the beginning of industrialization to fit their theory to developing



countries. It is just not possible to import Western crime theories per se to fit developing countries as pointed out by some Western writers like Ronald Troyer et.al. (1989) who have done research on developing countries. In their research on the Chinese social control system, they pointed out that, "the more we see of China, the less relevant many Western theories and social science seem. More and more Western social science appears to be culturally specific. The grand narratives constructed and used in the West just do not work very well in China. Indeed, many of our favourite ideas may have to be reconceptualized" (Troyer, 1989; 190). One reason for this conclusion was the vast cultural differences between Western countries and China. As pointed out by Klein and Gatz, the basic social unit in China was simply not the individual, but the group (Troyer, 1989; 172). Clinard and Abbott have failed to construct an alternative research framework suitable for the study of the increase in crime rate in developing countries. They also seem to suggest that every developing country will undergo the same stages of modernization. I do agree that there may be certain similarities between different developing countries. However, one should not overlook the distinctive features of a particular country. The problem one has to face is to resolve how much similarity can be made and how much specificity can be sacrificed. Clinard and Abbott have failed to recognise the differences in the rate of economic growth and modernization of different developing countries. This different in speed may be caused by different forms of colonialism or different economic policies pursued by a

particular Government. Developing countries cannot be treated as a single unit. Each developing country has its own unique features and differences with other developing countries.

Other important factors that must be considered are the culture, racial composition and religion of each specific developing country. Malaysia is a country where economic and social policies constantly evolved around the diversity of race, culture and religion. When one is doing research in Malaysia, especially on development, it is necessary to look at these issues and link them to the historical past which made Malaysia what it is today. This point is well illustrated by Tariq in his study of crime in Pakistan; "Owing to its peculiar social, economic and cultural conditions, the crime in all its characteristics is bound to have a peculiar nature in the country...As our social values, moral teachings and legal statutes are different from those of other lands in the world, it is expected that the crime, its nature and its etiology are peculiar and specific. Therefore, any foreign theory, developed for the understanding of the criminal behaviour, may just fail to explain the phenomenon in Pakistan" (Tariq, 1983; 1).

Clinard and Abbott also rely too heavily on official statistics and their interviews with a sample of prisoners who had committed property offences. They fail to see that the way crime is reported and the legal system of the country may be different from other countries. Moreover, even if the legal system is similar, the crime rate may be different in different societies as pointed out by Traver

and Vagg in their study of Hong Kong; "Hong Kong's comparatively low crime rate cannot be attributed to the efficiency of its criminal justice system since similar systems elsewhere have proven unable to stem the tide of crime. The answer is not to be found in the criminal justice itself, but in the way it is perceived and used by members of society. This brings us to the question of culture and how it affects crime and criminal justice" (Traver & Vagg, 1991; 7).

Clinard and Abbott only briefly mentioned crimes of politicians, officials and businessmen. Evidently, the crime problem is seen as a problem with the lower class. Sumner suggests that it serves as an ideological agency for the class control procedures of the capitalist state (Sumner, 1982; 21).

I would like to elaborate my arguments in more detail in relation to the study of crime in Malaysia. Although I am not a historian, a brief outline of the history of Malaysia is needed to illustrate my point that: a) the theory of modernization is not sufficient for the study of crime in Malaysia and b) economic and social policies have indirect effect on the crime rate. For a more detailed study of the history of Malaysia, refer to "History of Malaysia" by Barbara and Leonard Andaya, 1982 or "A History of Malaysia and Singapore" by N.J.Ryan, 1976.

### **3. Brief history of Malaysia**

Malaysia is a country rich in culture and diversity. Its population is made up of three dominant races i.e.

Malay, Chinese and Indian. The colourful historical background of Malaysia led to the emergence of a plural society. The eighty years of colonial rule and its earlier past have established cultural, political and economic patterns which can still be experienced today and these patterns have considerable influence on both the present problems and achievements of contemporary Malaysian society.

The Malay peninsula had been a very important trading place for hundreds of years before the founding of the Melaka sultanate around 1400. Trading stretched from Africa to China due to its geographical position. The regional overlord at that period was Srivijaya in Palembang, Sumatra. In the twelfth and thirteenth centuries, Srivijaya began to lose its hold over the Malay peninsula as the Chinese traders decided to deal directly with the Malay ports. When the Javanese army invaded Palembang, one of the Palembang princes, Parameswara, fled the country to Singapore. His son, Iskandar Shah, founded the Melaka sultanate in the Malay peninsula around 1400. Thus, Melaka's heritage was the Palembang tradition with its codified laws for efficient management of legal and administrative matters which were essential for long term international trading. On the political front, the Melaka court formulated its own concept of the state and how it should function. Melaka became a prosperous and renowned trading centre in the fifteenth century. It was strongly influenced by traders from overseas, in particular, Indian traders who introduced Islam to the Malay people in the early fifteenth century. Melaka also received vassal status from China, Thailand and Java.

Map of Peninsula Malaysia



Source: Andaya & Andaya, 1982; xx.

By the time of the reign of Melaka's last ruler in the early sixteenth century, the kingdom had grown to include almost the whole of the peninsula except Kedah, Trengganu and Kelantan (see map).

Melaka's period of greatness came to an end with the arrival of the first colonial power. The Portuguese captured Melaka in 1511. This was followed by the arrival of the Dutch who captured Melaka from the Portuguese in 1641. Finally, the British assumed control of Melaka in 1795.

The revival of the Malay sultanate was achieved in Johor. However, various rulers were attempting to assert their independence or supremacy. The civil wars among the different peninsula states were a sign of the 'decay' of the Malay society.

The British followed a policy of non-intervention when they first arrived at the peninsula. However, the disturbance in the Malay states endangered trade and investment. Thus, the notion of a British Resident advising the Malay ruler and helping to run the peninsula in a 'civilized' manner was introduced. 'Civilization' meant the adoption of English law, English government and even an English way of life. The British Resident's advice had to be asked and acted upon in all questions other than those touching Malay religion and custom. Thus, the term "British Malaya" was introduced.

Chinese participation in agriculture and mining in the Malay peninsula was already apparent in the eighteenth century and in the nineteenth century. The Chinese dominated these two industries. The Chinese came to the Malay

peninsula to escape the life of grinding poverty in China. Their arrival at the Malay peninsula to seek economic gains affected the rate of change in the Malay world. They revealed the potentialities and limitations of the economic environment of the peninsula. They were also involved in internal disputes between the Chinese secret societies as well as the conflicts between the Malay princes.

Between 1911 and 1931, there was worldwide demand for tin and rubber. The British government encouraged immigration from China and India to ease the labour shortage in the tin mines and rubber plantations of the Malay peninsula. This was because Malay peasants generally controlled the land which they cultivated and it was difficult to induce them to work for any employer.

Although the Malay peninsula now had three main ethnic groups i.e. the Malay, Chinese and Indian, the British created a "divide and rule" system of Government to administer the three major ethnic groups. Apart from a few prominent Chinese being included in the State Council, the Chinese and the Indians were not allowed to join the civil service. They were strictly confined to maintaining the economic progress of the peninsula. This was because they were regarded as temporary sojourners rather than permanent residents and potential future citizens of the country despite evidence of a growing immigrant population. Although the Malays were allowed to be involved in administrative matters, limited posts were assigned only to the Malay elites, creating a cleavage between the Malay elites and the rural peasants. Unlike the Malay rural

peasants, the Chinese had become an urban group since new towns were developing in the Chinese dominated mining areas. This served to maintain the cultural and economic gap between the Chinese and the Malays. The "divide and rule" system seemed to serve the interest of the British in developing the colonial economy.

Malaya was invaded by the Japanese in December 1941. During the Japanese occupation, the Chinese received harsh treatment from them because of the anti-Japanese resistance in China while the Malays were given prominent roles. The main anti-Japanese activity thus understandably came from the Chinese. They comprised the largest component in the Malayan Peoples Anti-Japanese Army, which in turn was dominated by the Malayan Communist Party. The Japanese counteracted by stirring up nationalist feelings among the Malays. Anti-Chinese feelings was further encouraged by the Japanese who used Malays in their paramilitary units to fight the Chinese resistance group. This caused Sino-Malay antagonism which erupted into fighting in the period between the surrender of the Japanese and the return of the British. It was during this situation that the proposals for Malayan Union were introduced by the Colonial Office Planning Unit in Britain. It referred to a new constitution which eliminated the Malay states' rights and the transfer of jurisdiction from the Malay rulers to the King of England. A Malayan Union citizenship was also created which gave equal rights to members of all races who had been born in Malaya or who had lived in the country for ten out of the preceding fifteen years. The introduction of the Malayan



Union would destroy the special political status of the Malays. A storm of protest broke out amongst the Malays. The Malayan Union had aroused nationalistic feelings in the Malays. The United Malays National Organisation (UMNO) was formed to represent the people. Negotiations between the British, the Malay rulers and UMNO brought about a new concept of a Federation of Malaya whereby the sovereignty of the Sultans, the individuality of the states and Malay special privileges were upheld.

Another problem for the British at that time was the growing strength of the Malayan Communist Party, formed in 1931, which had moved towards open rebellion. Its root was in China. Thus, the Chinese were associated with the Malayan Communist Party and were mistrusted by the Malays. The declaration of a state of emergency under the Emergency Regulations enabled the Government and police to have wider powers for the arrest and detention of persons suspected of taking part in subversive activities without bringing him to trial. The British also initiated the resettlement of Chinese squatters in "new villages" under curfew conditions to prevent them giving assistance to the guerrillas. Military and police operations became more aggressive. By 1953, the worst of the Emergency had subsided, although it had lasted ten years.

During the Emergency years, the British realised that the best way of defeating the terrorists was by encouraging the development of Malayan nationalism which would mobilize public feelings against the communists. The Emergency gave an impetus to plans for independence. By 1949, the Malayan

Chinese Association was established. At the Kuala Lumpur municipal elections in 1952, an alliance between UMNO and the Malayan Chinese Association won the majority. In 1954, the alliance was joined by the Malayan Indian Congress. The alliance pledged to achieve independence within the shortest possible time. An Independent Constitutional Commission was set up in June 1956 and submitted its proposals to the British Government early 1957. The Federation of Malaya Agreement was signed in August 1957 and independence was achieved on 31 August 1957. The Chinese and Indian wanted citizenship based on the principle of jus soli where all those born in Malaya would automatically become citizens. The Malays agreed in return being awarded Malay becoming the national language, a four-to-one ratio of Malays to non-Malays in the Malayan civil service and the preservation of certain other Malay rights and privileges. A Paramount Ruler would be chosen by the Conference of Rulers from the different States on the basis of seniority for a term of five years. The legal framework and other British institutions introduced during the colonial period were maintained, strengthened and developed. The Parliamentary and Cabinet system was modelled on the Westminster model. Parliament was composed of the House of Representatives of 104 directly elected members and a Senate of 38 members, nominated and indirectly elected.

The Federation of Malaya, Singapore and the Borneo states of Sabah and Sarawak were amalgamated in 1963 to form Malaysia. However, Singapore left Malaysia in 1965 to become an independent republic for the following reasons:

- a. Singapore's overwhelming Chinese population would upset the racial balance in the Malay peninsula;
- b. Singapore did not agree with retaining certain rights and privileges for the Malays.

### **3.1. First Malaysia Plan, 1966-70**

The First Malaysia Plan was the first integrated economic development plan for the three regions; Malaya, Sarawak and Sabah. The plan was also the first of a series of plans to solve both the economic and social problems of the country.

The main objectives of the First Malaysia Plan were:

1. the integration of the peoples and states of Malaysia by promoting the welfare of all;
2. a steady increase in the level of income and consumption per head;
3. an improvement in the standard of living of the rural population and other low income groups by increasing their productivity;
4. the provision of employment opportunities for the additional labour force and a reduction in the existing level of unemployment and underemployment;
5. a diversification programme in agriculture and industry so as to reduce the dependence on rubber and tin;
6. an educational programme for all Malaysians so that they might participate effectively in the process of economic and social development;

7. a programme for effective family planning to reduce the demographic pressure;
8. a land settlement scheme to provide the landless with economic-sized farms;
9. an efficient and sufficient infrastructure.

(Malaysia, 1965: 2)

Plans before the formation of Malaysia were committed to extensive rural development. This entailed the provision of infrastructural works, land development schemes and the modernization of the rural areas.

The First Malaysia Plan reflected a gradual shift towards the socio-economic and welfare concern of the people. Its major aim was to establish a more equitable distribution of income and wealth, especially between the rural and urban areas of the country. This was to be achieved through a faster rate of economic growth and the creation of greater employment opportunities. Thus, the plan also reflected "the understanding that structural change was a sine qua non of continued high growth of the Malaysian economy" (Higgins, 1982: 156). The private sector was expected to play an important part especially in the industrial sector and its related trade.

### **3.2. Second Malaysia Plan, 1971-5**

The Second Malaysia Plan was concerned with the implementation of the New Economic Policy. The introduction of the New Economic Policy was due to the occurrence of civil unrest on 13 May 1969 which showed deep discontent

among the different races in Malaysia. The political parties which contested the 1969 elections in Peninsula Malaysia were the Alliance, the Democratic Action Party, the Gerakan, the People's Progressive Party and the Pan-Malayan Islamic Party (Ongkili, 1985; 199). Although the Democratic Action Party claimed to be a non-communal party i.e. it was opened to all races, it was predominantly a Chinese party. The party rejected the special position of the Bumiputras (Malay and other indigenous people) and reaffirmed that, "a Malaysian Malaysia<sup>1</sup> is the anti-thesis of a Malay Malaysia<sup>2</sup>. They cannot co-exist" (Ongkili, 1985; 200). Ethnic equality and cultural pluralism were the basic principles underlying its platform (Andaya & Andaya, 1982; 280). The People's Progressive Party, like the Democratic Action Party, was basically a Chinese party although led by two Ceylonese brothers. The People's Progressive Party was even more critical than the Democratic Action Party of the Bumiputras' privileges. The Gerakan was a non-communal party campaigning for "equality, justice and equal opportunity for all". The election campaigns generated strong communal feelings and verbal battles. The result of the election was unexpected and a severe blow to the Alliance. Although it still had the majority of seats in the House of Representatives, the number dropped from 89 in 1964 to 66, out of 104. The Gerakan, the Democratic Action Party and the People's

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<sup>1</sup>Malaysian Malaysia means that Malaysia belongs to all Malaysians, regardless of race.

<sup>2</sup>Malay Malaysia means that Malaysia belongs predominantly to the Malays. Thus, any preference should be given first to the Malays.

Progressive Party together won a total of 25 seats while the Pan-Malayan Islamic Party won 12 seats. The Alliance votes dropped from 58.4% in 1964 to 48.8%. On 13 May, the jubilant Gerakan and Democratic Action Party supporters held a victory rally on the streets of Kuala Lumpur (the capital of Malaysia). The processions were not only noisy, but also provocative and abusive. A counter-rally that evening by UMNO supporters quickly deteriorated into communal violence. A curfew was declared. The Constitution was suspended and a national emergency was announced. The city was finally restored after four days of bloody violence. However, riot incidents persisted for two months. The May 13 riots revealed deep racial discontent in the society. One of the major reasons for this deep discontent was the inequality in the distribution of income and wealth among the different races in Malaysia. The status quo seemed to benefit the non-Malays more than the Malays. Jomo pointed out that there was a worsening distribution of income over the 1960s, a growing gap between town and country and growing inequality within all the major ethnic groups, with inequality in the Malay community increasing most (Jomo, 1990; 9). Although the average annual growth rate of the gross domestic product in Peninsula Malaysia was 5.8% during 1957-70 while the gross domestic product for the whole of Malaysia rose by an average of 7.8% (Jomo, 1990; 10), problems of unemployment and poverty persisted.

In 1970, the mean monthly income of Malay households was less than half that of the Chinese households. This is shown in Table 1.1. Mean household income of the Malays was

Table 1.1

## Peninsular Malaysia: Household Income Inequality

	1957-1958		1967-1968		1970		1973	
	Mean Household Income (\$ per month)	Gini Coefficient	Mean Household Income (\$ per month)	Gini Coefficient	Mean Household Income (\$ per month)	Gini Coefficient	Mean Household Income (\$ per month)	Gini Coefficient
Peninsular Malaysia	199	0.3705	217	0.5624	264	0.5129	362	0.4872
Rural areas	170	0.3549	114	0.4794	200	0.4689	269	0.4516
Urban areas <sup>1</sup>	261	0.3514	283	0.5224	428	0.5037	570	0.4742
Malays	144	0.3410	130	0.5072	172	0.4664	242	0.4437
Chinese	272	0.3322	321	0.5081	394	0.4656	534	0.4553
Indians	217	0.3117	253	0.4974	304	0.4722	408	0.4693
Others <sup>2</sup>	—	—	839	0.4912	813	0.6673	1,299	—

Sources: S. Anand, 1978: 61; Jinnall, 1978a; Malaysia, 1979c: 44.

<sup>1</sup>Urban area is defined as an area with more than 10,000 people.

<sup>2</sup>Others include Thai, other Asian, Eurasian and European.

Source: Salleh & Osman, 1982: 143.

M\$172 (approximately £43<sup>3</sup>) per month compared to the Chinese which was M\$394 (£98.5). The mean monthly household income of the Indians was M\$304 (£76). This means that the Malay households had the lowest mean monthly income. The Andayas refer to a study done in 1970 which showed that 49.3% of all households in Peninsula Malaysia received incomes below the poverty line estimated at M\$33 (£8.25) per capita monthly. Of these, about 75% were Malays (Andaya, 1982; 284). Malay households were concentrated in the rural areas whereas the Chinese were predominantly in the cities. In 1980, it was estimated that some 53.8% of the urban population were Chinese, with Malays 32.8% and Indians 12.3% (Sharif, 1982; 86).

The gap between the richest region i.e. the south-west region where the proportion of Malays was the least and the poorest region i.e. the east where there was a high concentration of Malays, was indeed very wide. Thus, the disparities between the different ethnic groups were also regional disparities. This growing inequality was primarily perceived in racial terms. The matter was made worse by political mobilization along ethnic lines; each ethnic political party trying to gain the support of their people by championing their rights and interests. Communal politics seem to be the best way for a political party to gain votes in Malaysia. The Malays resented the Chinese for dominating the economy. The non-Malays were frustrated with the Malay dominated state machinery which was believed to discriminate against them. In actual fact, it was the relatively few

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<sup>3</sup>1994 exchange rate.



Chinese capitalists together with the Malay administrative-political elite who enjoyed the bulk of the fruits of rapid economic growth in the 1960s (Jomo, 1990; 144).

From Table 1.2, it can be seen that in 1970, in the corporate sector of modern agriculture, only 0.3% of the acreage was owned by the Malays whereas the Chinese held 25.9% of the acreage. The bulk was held by foreigners i.e. 70.8%. In corporate industry, the Malays also played an almost negligible part i.e. 0.9%. In non-corporate industry, they held only 2.3% of the assets. In the corporate sector of the industry, foreigners were predominant i.e. 57.2%. Even so, the Chinese holdings (26.2%) were quite significant compared to the Malays. The non-corporate industrial sector was dominated significantly by the Chinese i.e. 92.2%.

Table 1.3 shows employment by ethnic groups and sector from 1967 to 1968 and 1975. It can be seen that the Indians and the Malays made up 50.9% and 32.1% respectively of those in the agriculture, forestry, hunting and fishing sector compared to 21.5% of the Chinese from 1967 to 1968. The Chinese dominated the manufacturing and commercial sector i.e. 15.5% and 19.1% respectively compared to the Malays 5.9% and 5.5%, and the Indians 3.5% and 8.1%.

The highly unequal distribution of wealth and income in Malaysia and the occurrence of civil unrest gave rise to the New Economic Policy. Thus, the New Economic Policy became the main objective of the Second Malaysia Plan. The New Economic Policy had a two-pronged policies for development to be adopted for a period of twenty years:

Table 1.2  
Ownership of Assets in Modern Agriculture and Industry,  
Peninsular Malaysia, 1970

Ownership	Modern Agriculture <sup>1</sup> (planted acreage)				Industry <sup>2</sup> (fixed assets)			
	Corporate Sector		Non-corporate Sector		Corporate Sector		Non-corporate Sector	
	('000 acres)	(%)	('000 acres)	(%)	\$ (million)	(%)	\$ (million)	(%)
Malaysians	515.0	29.2	697.6	94.1	559.7	42.8	167.2	97.6
Malay	5.0	0.3	349.3	47.1	11.2	0.9	3.9	2.3
Chinese	457.0	25.9	245.3	32.8	342.3	26.2	158.0	92.2
Indian	4.9	0.3	74.8	10.1	1.5	0.1	3.9	2.3
Others	48.1	2.7	19.2	1.8	187.2	14.3	1.4	0.8
Government <sup>3</sup>	—	—	17.0	2.3	17.5	1.3	—	—
Non-Malaysians	1,249.6	70.8	44.0	5.9	747.3	57.2	4.1	2.4
Total	1,764.4	100.0	741.6	100.0	1,307.0	100.0	171.3	100.0
% of total		70.4		29.6		87.4		12.6

Source: Reproduced from 1973a, Table 1-4.

<sup>1</sup> Modern agriculture covers estate acreage under rubber, oil palm, coconut and tea. FELDA is included in this category—under the non-corporate sector. Ownership is in terms of total planted acreage.

<sup>2</sup> The industry sector covers manufacturing, construction and mining. Ownership is in terms of fixed assets. Total excludes unallocatable assets amounting to \$25.2 million.

<sup>3</sup> Government ownership of 17,000 acres in modern agriculture is included in the non-corporate sector, while its ownership of \$17.5 million of fixed assets in industry is included in the corporate sector.

Source: Higgins, 1982; 154.

Table 1.3

Peninsular Malaysia: Employment by Ethnic Groups and Sector, 1967-8 and 1975

	1967/1968					1975			
	Total		Of which			Total		Of which	
	No. ('000)	% All Races	% Malays	% Chinese	% Indians	No. ('000)	% All Races	% Malays	% Chinese
1. Agriculture, forestry, hunting & fishing	500.7	21.1	33.7	10.4	1.7	640.1	17.9	28.4	7.2
2. Agricultural products requiring substantial processing	718.8	30.4	32.1	21.5	50.9	871.7	24.4	27.3	15.6
3. Mining, quarrying	72.0	3.0	1.6	5.1	2.9	37.1	1.0	0.7	1.6
4. Manufacturing	214.8	9.0	5.9	15.5	3.5	533.5	15.0	9.7	24.1
5. Construction	78.9	3.3	1.9	5.6	2.7	164.1	4.6	2.7	7.3
6. Electricity, gas, water, sanitary services	22.3	0.9	0.8	0.4	3.1	37.1	1.0	1.3	0.3
7. Commerce	255.2	10.8	5.5	19.1	8.1	492.8	13.8	8.2	22.3
8. Transport, storage & communications	86.2	3.6	3.1	3.6	6.1	146.9	4.1	3.7	4.1
9. Services	413.0	17.4	15.3	18.6	20.9	643.2	18.0	18.0	17.5
10. Not specified	3.5	0.1	0.1	0.2	0.1	0.7	0.2	—	—
Total	2,365.4	100.0	100.0	100.0	100.0	3,567.2	100.0	100.0	100.0

Sources: Malaysia, n.d. (d), 93; Malaysia, 1976c: 76-7.

Source: Salleh &amp; Osman, 1982; 138.

The first prong is to reduce and eventually eradicate poverty, by raising income levels and increasing employment opportunities for all Malaysians, irrespective of race. The second prong aims at accelerating the process of restructuring Malaysian society to correct economic imbalance, so as to reduce and eventually eliminate the identification of race with economic function. The process involves the modernization of rural life, a rapid and balanced growth of urban activities and the creation of a Malay commercial and industrial community in all categories and at all levels of operation, so that Malays and other indigenous people will become full partners in all aspects of the economic life of the nation.

(Malaysia, 1971: 1)

It was assumed that national unity would prevail from greater equity and balance among the different social and ethnic groups. Thus, the Second Malaysia Plan had two quantitative goals:

1. Employment by sector should reflect the ethnic composition of the population i.e. Bumiputras 54%, Chinese 35%, Indians 10% and others 1%;
2. By 1990, the Bumiputras' share capital of the corporate sector should increase to 30% from 2.4% in 1970, non-Bumiputras' share should increase from 34.3% to 40% and that of foreigners would drop from 63.3% to 30%.

(Lim, 1983: 8)

These goals would be attainable under conditions of sustained growth. The increase of the Bumiputras' share of the corporate sectors would be achieved through their active participation in the expanding output instead of through the redistribution of existing wealth. Likewise, it was assumed that the employment of the Bumiputras was to be secured

through new employment opportunities generated by economic growth rather than by a displacement of existing non-Bumiputra workers.

The introduction of the New Economic Policy required greater state intervention in resource allocation as well as public sector ownership and control of business enterprises. Public enterprises were set up to help expand the opportunities for participation by the Bumiputras in the commercial sectors through financial, technical, practical, advisory and other assistance to help them start and sustain their own commercial ventures, for example, Majlis Amanah Rakyat (Council for Trust for Indigenous People), Malay Development Finance Limited, Urban Development Authority, State Economic Development Corporation, etc.. The public enterprises also took up share capital and held them in trust for the Bumiputras until such time as they were able to purchase them on their own. Quotas were introduced in certain areas to safeguard Bumiputras' participation, for example, a quota of places within institutions of higher learning was set aside for Bumiputras so that top Bumiputra students would get a chance of entering the institutions of higher learning. This was seen as one means of redressing the ethnic imbalance in the professions. Subsidies were given to the Bumiputras in certain areas, for example, to paddy farmers to help poverty reduction. All these policies inevitably led to some positive discrimination.

Actual public expenditure for the various public corporations and agencies in the commercial and industrial sector increased from M\$137 mil. in 1966-70 to M\$1,552 mil.

in 1970-5 and more than doubled to M\$3,370 mil. in 1976-80 (Jomo, 1990; 156). The people who run these public corporations and agencies which still exist today are mainly politicians, Government officials and members of the Royal households. The immediate reaction to this situation is that these public institutions are run only by members of the elite group and thus poses several problems. Moreover, in Malaysia, politicians are allowed to own and run businesses at the same time. There is definitely a conflict of interests when politicians are also businessmen. Writers like Jomo (1990) and Snodgrass (1980) warn that these people have an opportunity to acquire financial resources and operating autonomy. "This creates several dangers. One is large scale corruption. Another is the use of wealth and power to 'buy' a political following, yet, a third is the possibility that the policy will spawn an industrial empire which will eventually become uncontrollable by political authority" (Snodgrass, 1980; 221). The Prime Minister of Malaysia has openly acknowledged the growing phenomenon of "money politics" i.e. money used to 'buy' supporters and it is usually given by big businessmen or rich people with vested interest to politicians for their political career in return for securing favours, especially business favours. Jomo attributed this trend to the expanded role of the public sector, state intervention and the corresponding influence of politically well-connected businessmen, especially under the New Economic Policy. "In fact, it is openly acknowledged that business interests now influence politics more than ever before in recent Malaysian history.

For instance, at the last general assembly of United Malays National Organisation (UMNO), the dominant partner in the ruling coalition, about half the delegates were businessmen" (Jomo, 1990; 235). This trend has important implications for wealth accumulation and distribution and income inequality in Malaysia. Of course it will also have an impact on the types of crime and crime rate in Malaysia. This is one important area of research for a developing country like Malaysia i.e. how the New Economic Policy, a political policy, has been abused by a few at the expense of the many and leading to wider ethnic polarisation rather than national unity. A few major monetary scandals have already taken place in Malaysia within the last ten years. For instance, in August 1986, Tan Koon Swan resigned as president of the Malaysian Chinese Association, an alliance group of the ruling party, after admitting to fraudulent business malpractice. In late 1986, Tee Ann Chuan, then president of the People's Progressive Party, another ruling party coalition partner, pleaded guilty to fraudulent business practices in Malaysia. The Bumiputra Malaysia Finance (BMF) scandal, which is the focus of this thesis, implicated major political leaders from UMNO. "It is now widely believed that most new opportunities for wealth accumulation are crucially determined by political access rather than entrepreneurial ability" (Jomo, 1990; 231). It is a well known fact (although there are no actual data) among Malaysians that many businessmen-politicians and politically well-connected businessmen have secured businesses from the public-sector projects and policies

(Jomo, 1991; 236).

The Andayas argued that the most important feature helping the Malaysian Government to pursue its policies is constitutional amendments restricting discussion of "sensitive issues" (Andaya, 1982; 292). The Internal Security Act (ISA) of 1960 limits public discussions, even among Parliamentary members, of topics which may lead to promote feelings of hostility between different races or classes of the population. The ISA allows the State to detain people without trial for any length of time. The Act provides "for the internal security of Malaysia, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property in specified areas of Malaysia and for matters incidental thereto" (ISA 1960). The amendment to Article 150 empowered the King to make declarations of "emergency even before the actual occurrence of an event if he is satisfied there is imminent danger of it taking place". Section 8(1) of the Act states that, "If the Minister (Home Affairs) is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that person to be detained for any period not exceeding two years". Police and security forces are given wide-ranging powers of search and arrest, based on hearsay and suspicion and the detention of persons in the first 60 days for investigation. This can be followed



by a confirmed two-year detention, based on allegations extracted from investigations without any trial in court and further extension of detention every two years at the discretion of the Minister of Home Affairs, on the recommendation of the Advisory Board and the Special Branch. There is a wider use of this Act after the 1969 race riot.

### **3.3. Third Malaysia Plan, 1976-80**

The New Economic Policy was still the underlying objective of the Third Malaysia Plan. The major theme was the enhancement of the well-being of Malaysians of all races, from all walks of life and in all regions of the country. While the New Economic Policy in the Second Malaysia Plan addressed exclusively the problem of Malay poverty, in the Third Malaysia Plan, "rural poverty" took on a broader meaning. The pattern of capital ownership was expected to change from a ratio of 3:34:63 for Malays, non-Malays and foreigners respectively to 30:40:30 by 1990 (Third Malaysia Plan, 1976: 88-89). Land development which had been utilised as one of the major ways to combat Bumiputra poverty was less heavily emphasized. Attention was shifted to the root causes of poverty such as landlessness, low productivity in human and capital resources, and unemployment. Thus, programmes were formulated to aim at higher productivity, expanding employment and creating a more conducive and dynamic economic and social environment in rural areas. A large proportion of overall development expenditure was still committed to the agricultural sector because primary commodities such as rubber, oil palm and

timber were still major sources of export earnings.

In conclusion, the Third Malaysia Plan provided "a fascinating case study of the massive intervention and use of Government policy and machinery to meet, contain and shape political developments in the country since the very scope and breadth of the plan is based, for all its economic strengths, on political factors" (MacAndrews, 1977: 308).

#### **3.4. Fourth Malaysia Plan, 1981-85**

The Fourth Malaysia Plan could be seen as elaborating and refining policies instituted in the Second Malaysia Plan and Third Malaysia Plan. "Attention was being switched to the theme of employment and by implication, industrialization policies" (Cho, 1990: 69). Export promotion was given priority over import substitution in industrial development policies. The agricultural sector was still the source of export earnings. It also provided the raw materials for the manufacturing sector. The expansion in agricultural production was expected as productivity increased. There was also an increased concentration on regional development so that the distribution of economic activities would be better balanced. Policies and programmes were also implemented to control inflation so that it would not affect the poor adversely.

Overall, the Fourth Malaysia Plan "projected a greater reliance on private investment than the previous plan" (Cho, 1990: 79).

### **3.5. Fifth Malaysia Plan, 1986-90**

At the end of the Fifth Malaysia Plan, the objectives of the New Economic Policy was expected to be achieved. The Fifth Malaysia Plan had strong emphasis on privatization, regional development and urbanization policies.

However, the Fifth Malaysia Plan also coincided with lagging international demand, weak commodities prices and increasing protectionism in overseas markets. These had affected export earnings. Inevitably, moderate growth with stability was to be pursued. Public expenditure on development had to be cut although agriculture and rural development continued to be emphasized. The major cuts fell on defence and security. The push was towards increased food production, small-scale industries and small-scale businesses in urban areas.

Although the Government was expected to play a lesser role in the Fifth Malaysia Plan, it would still provide an investment climate to stimulate certain domestic activities, for example, road construction, low-cost housing and rising standards of living in rural areas. The reduction in the role of the public sector was prompted by increasing foreign debts and huge budget deficits. Privatization policies would be pursued by the Government to enable it to reduce its participation in the domestic economy.

Thus, the role of the private sector was expected to increase dramatically. "The private sector, however, is expected to provide the dynamism in the economy with the progressive withdrawal of the Government from the economic sector. In this, the Government expects that the private

sector will switch from its preoccupation with finance, property development and real estate to manufacturing for export. Malaysia Incorporated, a term adopted to refer to the integration of the roles and functions of the Government, the private sector, employers and employees and producers and consumers has been adopted as the theme to help develop a united, just, stable and progressive society" (Cho, 1990: 79).

In conclusion, the Fifth Malaysia Plan expected much growth to come from the private sector.

#### **4. Research framework for studying crime in Malaysia**

From this brief outline of the history of Malaysia, one can understand why the crime problem of Malaysia falls outside the modernization theory of Clinard and Abbott. Many other factors like ethnicity, religion, government policies (especially plural development goals like the New Economic Policy), historical factors, etc., shape the society and thus they must have an impact on the types of crime and crime rate in Malaysia. As Tariq pointed out, "whenever an attempt is made to understand the phenomenon of crime, it is imperative to study it in its legal, social and cultural perspective. Only then a better understanding can be reached at and such complex matters can be understood as why there is a social approval of certain crimes in the society and what impedes their effective prevention and control" (Tariq, 1983; 1-2).

It is unfortunate that criminology in the developing countries has not received as much attention as in the West

and thus Western criminology has to be relied upon for research on crime in developing countries. However, this should not be taken as a set back. Western theories can still be used, but the researchers have to be aware of their limitations and the necessary modifications required to suit the developing country.

In formulating a theoretical framework for studying crimes in developing countries, I do not want to take a relativist position which stresses the uniqueness of each culture and denies the possibility of comparison and generalization. Neither do I want to take a reductionist viewpoint i.e. generalizing criminal behaviour across culture and thus denying the unique features of different countries. I would like to adopt a theoretical framework that incorporates both the relativist and reductionist viewpoints i.e. there are certain criminal behaviours which are universal and others which are unique to a particular country due to its historical, cultural and economic perspectives.

In my "middle-of-the-road" stand, I would like to introduce Sumner's theory. Sumner proposed a more valid theoretical framework for research on crime in developing countries. He proposed three factors which must be taken into consideration although I only agree with two i.e. internationalism, historical perspective and socialism.

#### 1. Internationalism

Criminological study of developing countries has to take an international perspective because what happens in

one country will affect other countries. The economy, politics and culture have become international matters. Sumner believed that we now live in an international society created by the "second imperialism" (Sumner, 1982; 5). The imperialists are the supra-national economic blocs. The policy for underdeveloped countries is not so much a policy of 'rural socialism' integrating the economy nationally, but more of a strategy to integrate the national economy into the international capitalist system. Moreover, most developing countries like Malaysia, depend on Western technology and capital investments of the developed countries in its development process. As a developing country, it is also keen to get involved in foreign investments either jointly or on its own, for example, the setting up of Bumiputra Malaysia Finance, the case study of this thesis, in Hong Kong. The Bumiputra Malaysia Finance scandal is an example of how a major fraud was committed by a few Malaysian elites with the cooperation of a group of people from another country i.e. prominent Hong Kong businessmen and professionals. This case also calls into question if internationalism has set up an international class system of its own. This issue will be discussed in later chapters.

## 2. The historical perspective

Sumner said, "Internationalism itself clearly springs from an historical perspective which demands an understanding of the present as a moment in a definite line of movement begun in the past. This perspective therefore

demands categories and studies which are consonant with an understanding of that line of movement. This line of movement which concerns me, and which underpins our present, is the growth of imperialism and international social relations" (Sumner, 1982; 8). Thus, the growth of imperialism and international social relations has to be mapped. Their effect on the processes that give rise to the concept and procedures of crime and justice has to be determined. This also inevitably leads to the study of who the legal process protects and who it helps to exploit in the society. As he says, "crime is not behaviour universally given in human nature and history, but a moral-political concept with culturally and historically varying form and content. It will remind us that modern criminal justice procedures are not universal, inevitable or 'natural', but legitimated practices of moral-political control which develop in response to conflicts spawned by the class relationships of exploitation and domination constituting the capitalist mode of production" (Sumner, 1982; 10). The criminal justice process in developing countries did not in many cases evolve naturally, but was imported and modified in response to conflicts in class relationships and exploitation. This is the central issue in Marxist theory which argues that the criminal law was used and abused by powerful classes in the process of primitive accumulation of land and labour (Sumner, 1982; 30). Sumner argues that crime is an integral ally of capitalist penetration into the third world (Sumner, 1982; 33). "The penetration of capitalism into the weaker areas of the globe, now the third world,

involved the use, non-use and abuse of the criminal law. Without this state power, nothing would have been possible, for it helped create and sustain the labour force needed for capital" (Sumner, 1982; 35). The modernization theory put forward by Clinard and Abbott does not see criminal law and crime as containing underdevelopment rather than helping it.

I agree with Sumner that a historical perspective of the country has to be laid out when studying crime of that country. However, I would not want to be trapped in a simple Marxist argument i.e. crime is only about crimes by and against the bourgeoisie. The criminal law is not only for the protection of the bourgeoisie from the proletariat. Moreover, his argument seems to suggest that there is no crime without capitalism and that crime can only be analyzed under the capitalist context.

The study of the historical perspective of crime should include factors like ethnicity, culture and religious differentiation and domination, the struggle for independence, the formation of its legal system and the process of nation building. Moreover, the crime problem during the colonial period has to be redefined in post-colonial era. The questions that were asked during the colonial period need to be reevaluated in the post colonial era. These factors are the unique features of a country which could influence the types and rate of crimes in that country. As Myrdal said we must often make historical generalisations and include selected material of a historical kind in order to explain present conditions. We must also realize that the lack of historical depth in our



approach restricts our understanding of the social reality we are investigating (Myrdal, 1968; 43). For a country like Malaysia, this historical perspective on criminal law inevitably turns us towards colonialism and the nature and policies of a plural society.

### 3. Socialism

Sumner suggested that the socialist revolution needed to be studied as it took place in the third world. As such, their crime rate and justice policy needed to be investigated. Sumner argued that this had sprung from fundamental methodological premises and substantive issues in Marxist theory.

From Sumner's theory, it can be seen that the two factors of internationalism and historicism are important to the Malaysian case. These two factors are already enough to form a reliable research framework to study the crime problem in Malaysia. Moreover, it is already very time consuming to do research based on these two factors. The third factor of socialism is not as important as the other two factors although it would be interesting to do research on it if time permits.

Heiland and Shelley (1991) suggested that the concept of the centralization of power structures and processes could be integrated with the conceptions of civilization and modernization. "Crime very often is a function of the power structure and influences struggles among dominant national elites and among the powerless seeking to regain or expand

their power. The explanatory value of the power dimension, added to the historical and developmental dimension suggested by us enhances our understanding of the changing patterns, forms and levels of crime and social control. We can suggest that the triad of modernization, power and civilization leads to a comprehensive macro-structural explanatory framework, which may be able to explain different criminological developments in diverse societies" (Heiland, 1991; 18). The centralization of power is taken to refer not only to the Government, but also to the corporate world.

The concept of the centralization of power structures and processes suggested by Heiland and Shelley should be taken into consideration in the study of crime in Malaysia. As noted earlier on, the New Economic Policy is run by a centralized power. So are most of the business enterprises. However, as the two writers caution, this factor should be studied along with other important historical factors.

## **Conclusion**

The intention of this chapter has been to set up a research framework for the study of crime in developing countries, especially for the case of Malaysia. In doing so, this chapter has arrived at the conclusion that the study of crime in developing countries goes beyond the issue of how countries are industrialized, urbanized and modernized. Each developing country has its own unique factors which can affect its crime problem directly or indirectly. These unique factors need to be analyzed in order to understand

the crime situation of that particular country.

For the case of Malaysia, this chapter has shown that the following perspectives are of great importance:

1. Historical perspectives;
2. Plural development goals;
3. Centralization of power structures and processes;
4. The laws of the country;
5. Internationalism.

This will be part of the focus of the subsequent chapters when the Bumiputra Malaysia Finance case is analyzed.

**Chapter 2**  
**Concepts And Definitions Of Crimes At The Workplace**  
**(In Particular Fraud)**

In chapter 1, I discussed theories of crime in developing countries. I tried to pinpoint some areas which had been excluded by Western theories of crime when studying such crime by referring to Malaysia.

In this chapter, I shall discuss the development of the concepts and definitions of crimes committed at the workplace, in particular the crime of fraud, which is the specific focus of this thesis. From this discussion, I shall proceed to introduce and clarify the concepts and definitions which are suitable for this thesis.

**1. Development of the concepts and definitions of crimes at the workplace**

In this section, I will introduce the concepts and definitions which are suitable for my thesis. In doing so, I need to look at past concepts and definitions given by prominent criminologists in order to consider the strength and weakness of each of them before arriving at my own concepts and definitions.

In the 1940s, the attention of criminologists and academics was drawn to deviant behaviour associated with the corporation, universally known as "white collar crime".

Sutherland (1949) was the first person to try to conceptualise the crimes that were committed in the business world. He noted that such crimes were committed by offenders

who were mentally sound and well to do. He introduced the concept of "white collar crime" which he defined as "a crime committed by a person of respectability and high social status in the course of his occupation" (Sutherland, 1949; 9). This concept was introduced to distinguish crimes committed at the workplace from crimes associated with poverty and the personal pathologies which accompany poverty.

The identification of white collar crimes with high status offenders had generated much criticism. One of the criticisms by writers like Braithwaite (1985) and Shapiro (1990) was that the types of crime termed as white collar could also be committed by persons who were not of "high social status". Thus, the concept of white collar crime has been deemed vague. For example, fraud could be committed by both high level and low level workers. The word "white collar" gave problems in the study of the specific crime. There have been suggestions about redefining or changing the concept.

Clinard and Quinney (1973) divided white collar crimes into occupational and corporate crimes. "Occupational crime consists of offences committed by individuals for themselves in the course of their occupations and the offences of employees against their employers" (Clinard & Quinney, 1973; 188). This definition incorporated both white collar and blue collar crimes. It did not differentiate the class, status or respectability of the person. Corporate crime was defined as "the offences committed by corporate officials for their corporation and the offences of the corporation

itself" (Clinard & Quinney, 1973; 188).

Schrager and Short (1978) chose to use the term "organisational crime" instead of corporate crime. The advantage of using this term was that it incorporated both crimes committed by public as well as private organisations. Organisational crime was defined by both writers as "...illegal acts of omission or commission of an individual or a group of individuals in a legitimate formal organisation in accordance with the operative goals of the organisation which have a serious physical or economic impact on employees, consumers or the general public" (Schrager & Short, 1978; 411-412). Box (1983) agreed with this definition, but he believed that organisational crimes could also affect other organisations. Thus, Box suggested that the definition given by Schrager and Short should end with the words "...the general public and other organisations" (Box, 1983; 22). Box (1983), himself, differentiated between corporate crimes i.e. crimes committed for the corporations and "employee crimes" i.e. crimes committed by employees against the corporations for their own benefit. In addition, he introduced the term "criminal corporations" which was used for corporations deliberately set up, taken over or controlled for the explicit and sole purpose of executing criminal activities (Box, 1983; 22).

Calavita and Pontell (1992), in their study of the savings and loans crisis, introduced the term "collective embezzlement" or 'looting' which was defined as "the siphoning off of funds from a savings and loans institution

for personal gain, at the expense of the institution itself and with the implicit or explicit sanction of its management" or in simpler terms "robbing of one's own bank" (Calavita & Pontell, 1992; 234).

Pearce (1976), who could be considered a Marxist criminologist, differentiated between offences at the workplace which threatened the interest of capitalism and those which were primarily committed in the course of capitalist activities. The example he cited was that an increase in embezzlement might lead to the collapse of capitalism whereas violations of anti-trust laws did not pose a threat to the social structure of capitalism. This example is difficult to substantiate. No capitalist country so far has collapsed due to increase in the rate of embezzlement.

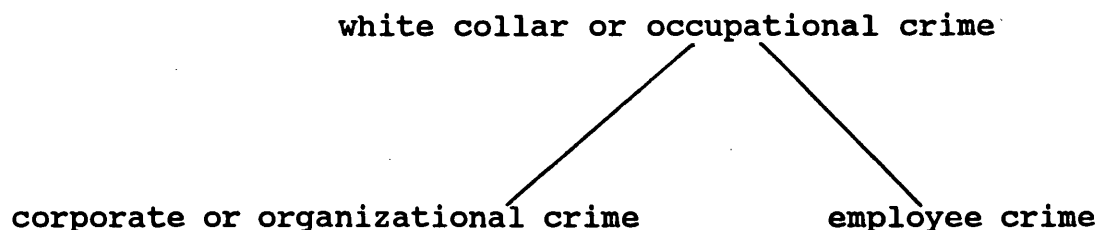
There is a general acceptance among criminologists and academics that offences committed at the workplace can be for or against the organisations. Offences committed for the organisations will bring gains to the employers and the organisations whereas offences committed against the organisations will benefit the employees at the expense of the organisations.

Croall (1992) and Braithwaite (1985) preferred to keep the term "white collar crime" as "the concept is shared and understood by ordinary folk as more meaningful than occupational crime, corporate deviance, commercial offences, economic crime or any competing concept" (Braithwaite, 1985; 3). However, Braithwaite noted that occupational crimes should be separated from corporate or organisational crimes

(Braithwaite, 1985; 19).

For my thesis, I would accept that the term "white collar crime" denotes occupational crimes of workers of all levels because of the common usage of the term in the society. However, I do not agree with the differentiation between corporate or organizational crime as crimes committed for the corporation and occupational crime as crimes committed by the employees for themselves. I shall consider corporate or organisational crime as part of occupational crime. This is because corporate or organisational crimes are committed by the workers for their corporations in the course of their occupations. I prefer to accept the differentiation made by Box (1983) between corporate or organisational crime and employee crime. The term "employee crime" used to describe crimes committed by workers for their own benefit in the course of their occupations is more specific and accurate than the term occupational crimes. See diagram 1 below.

Diagram 1



### **3. Development of the concepts and definitions of fraud**

Fraud is one specific type of white collar or



occupational crime. This specific crime will be the main focus of this thesis. As with the definition of white collar crime, there is no commonly accepted definition of fraud. Neither has there been any commonly acceptable systematic classification of fraud.

One of the early writers on fraud was Maurice C. Moore whose book, "Frauds & Swindles: A Cautionary Handbook" was first published in 1933. It contained an early account of the types of fraud that existed at his time i.e. mainly petty and small time frauds on shopkeepers, till-robbing, shoplifting, etc.. The book did not refer to any class system.

Moore could also be considered as one of the early writers who propounded what is later known as labelling theory when he said, "...such an individual would be more likely to 'get away with it', because one would be on the look out for someone of quite different type and the only thing to do is to take nobody for granted - no stranger, no one of whose bona fides you are not thoroughly well assured, no matter how well-dressed, plausible, with 'an honest face', he or she may be" (Moore, 1947; 10). What is particularly interesting in his book is the way he concluded by warning readers not to leave their names and addresses in public places, for example, throwing a used envelope or spoiled telegram forms with personal details in the post office. Although this piece of advice is still valid today to prevent crimes like credit card fraud and supplementary benefit fraud, society has to be more careful than that these days because technology has introduced many more

sophisticated crimes.

Comer defined fraud as "any behaviour by which one person intends to gain a dishonest advantage over another" (Comer, 1977; 1). The definition of fraud covered such acts as petty theft, embezzlement, forgery, commercial espionage, extortion and other white and blue collar crimes. Comer defined corporate fraud as those frauds in which a company was involved (Comer, 1977; 380).

Fraud, in its broadest context according to Bologna, was "intentional deception of another person through means such as lying and cheating for the purpose of deriving an unjust personal, social, political or economic advantage over that other person" (Bologna, 1984; 2). This definition incorporated simple acts like telling a white lie to complex acts like corporate fraud. With this broad definition, everyone can claim to be a victim of fraud. Thus, any empirical research on fraud has to try to put boundaries around the area it is dealing with, for example, computer fraud, management fraud, business fraud, consumer fraud, etc.. The list will get longer as time goes by with new technology and new knowledge.

Bologna initially defined corporate fraud together with management fraud as "wilful misrepresentations of financial facts by management and non-management personnel of business organisations" (Bologna, 1984; 9). Within this definition, Bologna included embezzlement as it involved people in positions of trust in business organisations and the manipulation of accounting records. Employee theft or larceny would also be included if it involved manipulation

of accounting records. This definition of corporate fraud and management fraud is too specific as it excludes offences which are not wilful misrepresentations of financial facts. Bologna also decided to include commercial bribery i.e. employees' corruption by outside vendors, contractors and suppliers. It should be noted that bribery may not lead to wilful misrepresentation of financial facts. For example, bribery to get a contract or bribery to get things done faster which do not harm the corporation cannot be included in his definition of corporate or management fraud. He summed up corporate fraud or management fraud as "that class of business crimes in which a business organisation may become a victim of fraud, theft or embezzlement by insiders or outsiders" (Bologna, 1984; 9). This definition of corporate or management fraud is too specific and it also limits the definitions of other terms.

However, in subsequent pages of his book, Bologna decided to define corporate fraud and management fraud separately (Bologna, 1984; 19).

Corporate fraud was then defined as any fraud perpetrated by, for or against a business corporation. Frauds that were directed against the corporation included theft and embezzlement. Frauds that benefitted the corporation included price fixing, cheating customers and political corruption. Corporate frauds could be generated internally by employees, executives and agents for or against the corporation. They could also be generated externally by customers, suppliers or vendors for or against the corporation.

Management fraud was defined by Bologna as "the intentional overstatement of corporate or unit profits, inspired, perpetrated or induced by employees serving in management roles who seek to benefit from such frauds in terms of coveted promotions, job stability, larger bonuses, or other economic incentives and status symbols" (Bologna, 1984; 20).

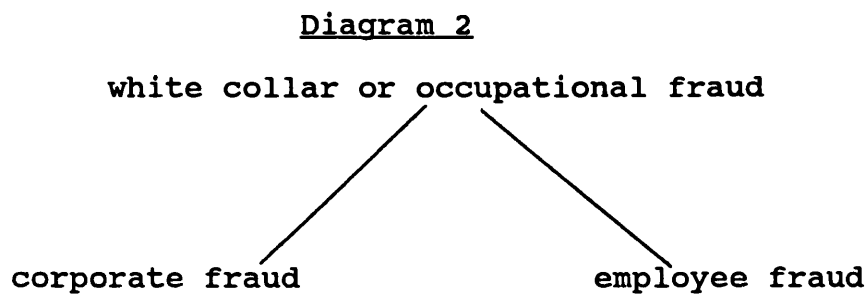
Huntington defined management fraud as "the misrepresentation of the financial position or the concealed theft or improper use of the resources of a business, carried out by existing management at a senior level of the entity concerned" (Huntington, 1992; viii). He went on to define employee fraud as "the concealed theft or improper use of the resources of a business, carried out by employees below management level of the entity concerned".

Huntington's definition of employee fraud as committed by employees below management level is problematic as it does not see the people in the management level as employees of the organisation.

The professional view on fraud given by The Chartered Institute of Public Finance and Accountancy (CIPFA) defined fraud as "Those intentional distortions of financial statements or other records which are carried out to conceal the misappropriation of assets or otherwise for gain" (Jones, 1993; 7).

I agree with Bologna in his differentiation between fraud committed for the corporation and fraud committed against the corporation. However, I would like to use the terms I used for work place crimes in general for the

specific crime of fraud i.e. occupational fraud or white collar fraud to mean frauds committed by individuals for themselves or for the corporation in the course of their occupations; corporate fraud as frauds committed by employees for the benefit of the corporation and employee fraud as frauds committed by employees for their own benefit. See diagram 2 below.



These categories are applicable to other types of white collar or occupational crimes. This system of categorising crimes at the workplace also prevents the introduction of too many confusing terms.

I would also like to add the fact that fraud is also one specific type of corruption. The word corruption will be used constantly throughout this thesis. My justification could be found in the definitions of corruption given by a few prominent criminologists as given below.

Corruption was defined by Brooks in 1910 as "the intentional misperformance or neglect of a recognised duty, or the unwarranted exercise of power, with the motive of gaining some advantage more or less directly personal" (Alatas, 1990; 1). This definition can be used to

incorporate employee fraud.

In 1936, Garrigues said that, "Graft in the broadest sense is merely any act which constitutes the avoidance by a public official of the terms of his contract of employment with the public and the substitution of his own interest in place of the public interest as the controlling factor over his conduct" (Garrigues, 1936; 5).

Nye derived a more detailed definition of corruption which is considered as a classic definition by some writers. He saw corruption as "...behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence" (Nye, 1967; 419). Nye saw corruption in terms of personal influence.

In his book "The Sociology of Corruption", Alatas defined corruption as the subordination of public interests to private aims involving a violation of the norms of duty and welfare, accompanied by secrecy, betrayal, deception and a callous disregard for any consequences suffered by the public (Alatas, 1980; 12). Thus, corruption was viewed as the abuse of trust in the interest of private gain.

With the definitions of corruption above given by prominent criminologists, fraud, especially employee fraud, would be considered as part of corruption in this thesis.

In the next chapter, I will discuss, in detail, a case study of the different ways employee fraud can be committed in a financial institution. The case that I will be discussing is the Bumiputra Malaysia Finance/Carrian case.

This case is also an example of "collective embezzlement" or "robbing of one's own bank" with the implicit or explicit sanction of its management as introduced by Calavita and Pontell (Calavita & Pontell, 1992; 234).

### **Chapter 3**

#### **The Bumiputra Malaysia Finance Limited Case**

This chapter intends to piece together the complicated Bumiputra Malaysia Finance (BMF)/Carrian case in order to show how frauds can be committed in financial institutions. The facts used in this chapter were obtained from the final report of the investigation of the Committee of Enquiry, "Far Eastern Economic Review", Malaysian newspapers, British newspapers, Parliamentary speeches of Lim Kit Siang, the leader of the Democratic Action Party (opposition) in Malaysia, articles from pressure groups like Aliran and academic articles. It should be pointed out that no quote was taken from the report of the Committee of Enquiry because the leader of the enquiry, Ahmad Noordin had warned me that I could be sued by Bank Bumiputra Malaysia Berhad (BBMB), the parent bank of BMF, if I did so without its permission. Any quotes taken would be from secondary sources or from Lim Kit Siang's (the opposition party leader) parliamentary speech as it would be covered by parliamentary privilege. I was also fortunate enough to meet a journalist by the name of Kevin Cahill. He was the organizer of the "Lorrain Osman (a Director of BMF) Appeal Committee" in England. Kevin Cahill had given me some important cables relating to the case. However, as these cables are still under the Public Interest Immunity granted by the High Court in England, which means that they can never be used in any trial in a Crown jurisdiction or made public, I cannot include them in my thesis. However, I will be able to show



them to my examiners on the day of my viva voce. I also managed to interview a few people who were directly or indirectly involved in this case. But, I have given them my word that I would not reveal their identities in this thesis.

It was a lot of hard work trying to understand, verify the facts and piece the case together. Thus, it would be an injustice to my effort and to the academic community who are interested in this area not to report the case in as detailed a way as possible for a thesis such as this has never been done before by other academic writers. Moreover, the examples of fraud that will be given in this chapter illustrate the different ways it can be perpetrated and how money can go missing. This should be illuminating to any researchers in fraud offences. In the following chapter, i.e. chapter 4, the sociological problems and the Malaysian perspective of this case will be discussed.

## **1. Introduction to the case**

The introduction of the New Economic Policy in Malaysia to help eradicate the unequal distribution of income and wealth among the different races (as explained in Chapter 1) led to the development of a large number of public bodies and corporations to promote the Bumiputras' (indigenous people of Malaysia) participation in the economy.

Bank Bumiputra Malaysia Berhad (BBMB) was established in 1965 with public funds as one of the projects in line with the New Economic Policy. In the words of the then Prime Minister of Malaysia, Tun Abdul Razak, when he launched BBMB

on 30 September 1965, "to remedy the lack of capital among the Bumiputras so as to enable them to improve their existing business and to encourage them to undertake new enterprises which are expected to accelerate development and increase the wealth of the country". Thus, a wide range of local and international banking facilities were provided for the Bumiputras. From 1971 to 1980, Parliament allocated a total of M\$253.5 million to BBMB.

BBMB's rapid growth could be said to be due largely to Government backing. It had preferential treatment in access to deposits of Government agencies. Its first Chairman, Tengku Razaleigh, was an aristocrat and a rising star in the United Malays National Organisation (UNMO), the ruling political party.

During the late 1970s, property and share markets were booming in Hong Kong due to rapid industrial expansion. Large profits could be made from escalating property values even though the investments might be on a short term. A subsidiary company of BBMB, Bumiputra Malaysian Finance Limited (BMF) in Hong Kong which was set up on 12 December 1977, took advantage of the situation and began investing heavily in the Hong Kong property market through several investment and property firms. The largest of these firms was the Carrion Group under the leadership of George Tan.

When negotiations between Britain and China began in September 1982 for the return of Hong Kong by 1997, the Hong Kong stock market plunged, property prices collapsed and the value of the Hong Kong dollar fell. The Carrion group had borrowed large sums of money from BMF without proper

collateral. The collapse of market prices left the Carrian Group on the brink of bankruptcy and BBMB began an internal investigation into the operations of BMF, its subsidiary in Hong Kong.

The "Asian Wall Street Journal" on 10 November 1982 gave the first newspaper detail of BMF involvement with Carrian. The Chairman of BBMB, Nawawi, denied the extent of involvement. In February 1983, the Finance Minister who was also BBMB's first Chairman, Tengku Razaleigh, told the press conference that the loans were "nothing more than a normal business problem". He also said that BBMB and BMF were not under the control of the central bank and presumably not within the purview of his Ministry (FEER, 3/3/1983).

In July 1983, Permodalan Nasional Berhad which held 70% controlling shares of BBMB, injected M\$600 mil. into BBMB shareholders fund in an apparent rescue mission. Permodalan Nasional Berhad was throwing good money after bad money. Permodalan Nasional Berhad was the parent body of Amanah Saham Nasional, the unit fund of 1.3 mil. Malay small-time investors. This action could mean that the interests of the small investors in Amanah Saham Nasional had been prejudiced by the Permodalan Nasional Berhad move.

On 18 July 1983, Jalil Ibrahim, a senior BBMB auditor seconded to BMF to look into the matter, was murdered. He was trying to stop a loan of US\$4 mil. to the Carrian Group. Jalil's death led to the arrest of George Tan and his appearance in the Hong Kong High Court in October on fraud charges.

At the court hearing, it was revealed that Carrian

Investment Holdings, one of the companies in the Carrian Group, owed BMF about M\$1.7 bil.. No one had ever given a thought to BMF's deep involvement with the Carrian saga. BMF had also given loans which exceeded M\$2 bil. to Carrian related companies i.e. the Eda Group and the Kevin Hsu Group. The total sum of money lost was estimated to be around M\$2.5 bil.. These loans had exceeded the capital and reserves of BBMB, the parent organisation, which had been established at M\$1.2 bil..

When the whole case surfaced with the murder of Jalil, the Chairman of BBMB claimed that "there was no crisis" even as evidence unfolded to reveal massive lending to the Carrian Group. On 11 October 1983, the Prime Minister, Mahathir Mohamad, announced at a press conference that a former Chairman and four officials of BMF had been given "consultancy fees" amounting to HK\$3.3 mil. from BMF on top of their salaries and allowances. He described that action as a "betrayal of trust" and a "heinous crime", but claimed that no action could be taken as "what they did was morally wrong although legally, it was within the law, we cannot take them to court" (NST, 12/10/1983). The Malaysian Government still tried to deny the illegality that had taken place.

When the opposition party in Malaysia, the Democratic Action Party, asked the Government in the March and July 1983 Parliamentary meetings about the BMF crisis, Tengku Razaleigh, the Finance Minister, invoked the Central Bank Ordinance 1958 and the Banking Act 1973 to justify the legal inability to disclose any information relating to the

affairs of any bank except by way of a High Court order. The press discussion of the BMF case, including in the New Straits Times (NST) which was owned by UMNO, the ruling political party, was intense.

The height of the scandal coincided with the constitutional crisis over the power of the Malay Rulers where the Government proposed to take away the privileges and immunities enjoyed by the Malaysian royal families. It led to the Government introducing in Parliament a new Official Secrets Act which made it an offence for anyone seeking official information about Government activities or operations unless he or she reported immediately to the police or to the department head if he was a public officer. The penalty for failure to do so was a jail sentence of up to five years or a M\$20,000 fine or both (FEER, 3/11/1983). I believe the introduction of this new Act was to deter the public from probing and questioning the activities of the Government.

The general public, the Consumer Association of Penang, the Malaysian Trade Union Congress, the opposition parties, the Selangor Graduates Association and the youth wing of UMNO asked the Government to set up a Royal Commission of Inquiry on the BMF scandal. Eventually, due to the pressure, a limited three-men Committee of Enquiry headed by the Auditor-General, Ahmad Noordin, was set up in January 1984 by BBMB with the support of the Government. The Committee, however, lacked the power of a Royal Commission which was favoured by the general public and the pressure groups. For example, it did not have the power to subpoena persons,

papers and records and it did not give legal immunity to the investigators against possible cases of defamation (see Appendix 3.1). The Prime Minister said that as BMF was registered in Hong Kong and was thus outside the jurisdiction of Malaysia, a Royal Commission was not possible (Star, 4/1/1984).

When the Committee had finished the report, which cost the Malaysian taxpayers M\$1.8 mil., in January 1986, the Government was very reluctant to have it published so that it would be available to the general public. The reason given by the Prime Minister was the fear of libel suits taken against the Government by the people named in the report. Fifteen public interest groups, the labour union and the opposition parties signed a joined memorandum addressed to the Prime Minister calling for the release of the report. On 11 January 1986, the Deputy Chairman of the opposition Malaysian People's Socialist Party sought a court order in his capacity as an account holder with BBMB that the documents be made public. Ahmad Noordin, head of the Committee of Enquiry, also pleaded with the Government to release the report. The Prime Minister said to him, "if damage is done to the credibility or credit-worthiness of BBMB", as a result of publishing the report, "the bank will be fully justified in suing you for damages" (FEER 30/1/1986) and that he must also take responsibility for any legal actions by persons named in the report. Ahmad Noordin and one other member of the Enquiry Committee, Chooi Mun Sou, agreed to take responsibility. The reports were sold at M\$250 (about £63) per set with a limited edition of 2,000

copies. The price was beyond the reach of many Malaysian citizens. Most of the copies were bought up by BBMB, itself.

The Government finally produced a white paper on 11 March 1986 which reported on the financial losses, but assigned no blame for mismanagement or for the corrupt practices. The white paper was a very shallow paper which the Malaysian public called a "white wash" (Aliran Monthly, March/April 1986; 22; Karim, 1989; 103). The police did not take any action even though there were clear indications of criminal acts. The Attorney-General, Abu Talib Othman, claimed that the Enquiry Committee's findings could not be the basis for legal actions because only police investigations could be taken into account. He also claimed that he could not arrest and charge anyone because BMF culprits could not be prosecuted in Malaysia for offences committed outside the country (Star, 30/11/1984). The Anti-corruption Agency in Malaysia, which was supposed to be an independent body empowered to bring any corruption cases to justice, also did not carry out any investigation even though there were clear evidences of corruption. The Anti-corruption Agency must have been aware of the report on 18-19 March 1983 by the "Asian Wall Street Journal" which named names and their detailed corrupt transactions.

On 31 December 1983, all the problematic loans of BMF were assigned to BBMB which amounted to M\$2.255 bil.. The Government then used Petronas, the Malaysian national oil corporation, to take over BBMB's debts on 17 September 1984. Petronas bought 90% of the share capital of BBMB for M\$933 mil. and also the problematic loans of BMF for M\$1.255 bil..

In December 1983, BMF commenced civil proceedings in Hong Kong against the Carrian Group.

**2. A brief account of some of the management procedures of BMF**

**2.1. Reporting to BBMB**

BMF, as one of the overseas branches of BBMB, was required to submit regular reports to the BBMB Head Office in Kuala Lumpur. These reports consisted of:

**a. Weekly Reports**

These reports, which covered Money Market lending and borrowing from financial institutions as well as foreign exchange transactions, were sent to the International Division of BBMB. Thus, monitoring of the foreign exchange exposure of BBMB and checks on compliance with the lending limits placed on all the branches including BMF were possible through these reports.

**b. Monthly Returns**

Monthly returns covered more details than the Weekly Reports. However, when BMF started operating in Hong Kong, it did not give details of local loans and Money Market lending to corporate customers who were not involved in the finance industry. Local loans to customers were listed in the Monthly Returns only from January 1982 onwards and Money Market lending to corporate customers were only itemised from January 1983.



### c. Quarterly Reports

Quarterly Reports were submitted by the International Banking Division of BBMB to the Board of BBMB. These reports covered the operation of the bank's overseas branches as well as of BMF.

### **2.2. Who was sent the Monthly Returns?**

Until mid 1982, the Monthly Returns were sent by BMF to Rais, the Senior General Manager of the International Banking Division of BBMB, who was also the alternate Director of BMF, and a copy was sent to Lorrain Osman and Hashim, the Directors of BMF (see Table 3.1 below). Beginning from July 1982, a set of Monthly Returns was sent to the General Manager, Funds Management Department. A set was also sent to the central bank beginning January 1983.

Table 3.1

#### Board of Directors of BBMB as at April 1981

Kamarul Ariffin (replaced by Nawawi on 9 February 1982) -  
Chairman

Hashim Shamsuddin  
Lorrain Osman  
Haji K. Munshir Ariff  
S.O.K. Ubaidulla  
Suleiman Ninam Shah  
John K.D. Eu

#### Board of Directors of BMF

Tengku Razaleigh (replaced by Hashim on 8 July 1977)  
Lorrain Osman  
Rais Saniman (alternate director)

#### Management team of BMF

General Manager - Ibrahim Jaafar  
Assistant General Managers - Henry Chin  
Jalil Ibrahim  
Chief Dealer - Mansor Saat

### **2.3. Lending limits of banks**

At BBMB, the lending limits to customers that were placed on overseas branches were known as Global Placement Limits. These Global Placement Limits included limits that overseas branches or Kuala Lumpur, the Head Office, could lend to BMF. These were more commonly known as Inter-branch Placement Limits. However, these limits did not control or determine the types or quality of loans that BMF made. The Global Placement Limits were determined every year by the managing committee of BBMB and then approved by the Executive Committee and the Board of Directors of BBMB. The General Manager and Deputy General Manager of the International Banking Division were given an additional limit of 30% over and above the approved Global Placement Limit. An additional limit of 30% was also given to any member of management. However, this discretion was seldom used. Requests for increases in limits were usually referred to the appropriate committee. However, on 24 January 1981, BMF revised the lending authority of its Board members without getting the approval of BBMB (see Appendix 3.2 for details).

The Inter-branch Placement Limits were also revised annually by the management committee. However, there was no specification by BBMB as to which committee could do the job. There were instances where the Inter-branch Placement Limits to BMF were approved by the Loans Committee 'A' and by the Supervisory Committee. From 1979 to 1983, BMF frequently requested that the limits that overseas branches and Kuala Lumpur could lend to it should be increased.

Without a detailed study of the needs of BMF, BBMB approved the requests (see Appendix 3.3a & 3.3b). BMF funding from the BBMB overseas branches was US\$60 mil. in 1979, but grew rapidly to US\$380 mil. in 1981, US\$660 mil. in 1982 and US\$950 mil. in 1983.

#### **2.4. The external control of BMF**

##### **a. The Government**

The Government has the role of regulating banking practices, through supervisory agencies or its central bank, to maintain public confidence in the financial institutions and the banking system.

##### **b. Bank Negara, the central bank**

In Part VI of the Banking Act, 1973, Bank Negara was given powers of supervision and control over banks carrying on business in Malaysia. These powers included mandatory provisions to investigate, under conditions of secrecy, the books, accounts and transactions of each licensed bank and of any branch, agency or office outside Malaysia opened by a licensed bank incorporated in Malaysia. It also empowered Bank Negara, in the event that a bank had informed Bank Negara of its inability to meet its obligations, to take all appropriate measures to direct its operations. This also included the power to assume control of the bank. The Banking Act also provided for every licensed bank incorporated in Malaysia to seek the prior approval of Bank Negara before amending any part of its memorandum or articles of association.

BMF was under the indirect control of Bank Negara and had to abide by the rules of Bank Negara.

c. Deposit-taking Companies Ordinance of Hong Kong

Chapter 328, Section 22(1) of the Ordinance prohibited a deposit-taking company from granting loans or credit facilities to any one customer or group of customers in excess of 25% of its paid-up capital and reserves unless covered by a form of guarantee acceptable to the Commissioner of Deposit-taking Companies who was also the Commissioner of Banking. BMF had provided a "letter of comfort" from BBMB when it started its operation in Hong Kong, which was a confirmation that the parent bank would fully support the obligations of BMF. Bank Negara, the central bank, stated that it had no objections to the issuance of this letter. Thus, BMF was freed from the 25% restriction.

Section 20(1)(a) of the Deposit-taking Companies Ordinance also required all deposit-taking companies to submit Monthly Returns showing assets and liabilities at the end of every month to the Commissioner. This was to enable the Commissioner to monitor the liquidity position of the deposit-taking companies. The Commissioner also examined the books and records of the deposit-taking companies to check for adherence to the Ordinance. A review of the deposit-taking companies' loans and advances would also be made. However, in the case of BMF, it seemed that the Commissioner relied on the "letter of comfort" and did not review the loans and advances of BMF. The letter must have been deemed

sufficient guarantee from the parent bank of BMF by the Commissioner.

### **3. Who is who in the BMF scandal**

#### **a. George Tan**

George Tan was the master-mind behind the Carrian Group. He had been described in "The Carrian File" by Bowring and Cottrell (1984) as a "big talking salesman" who managed to 'sell' loan agreements to the bankers. He was a Singaporean national who left for Hong Kong in 1972. At that time, he was adjudged a bankrupt by the court in Singapore when his construction company, Gin Corporation, was wound up on a petition by Lee Wah Bank which claimed S\$141,000. Legally, he should have been barred from engaging in any business during that period in Singapore or elsewhere. The bankruptcy order was rescinded in September 1980.

When his Singapore passport expired in 1974, he decided to remain in Hong Kong without the permission of the Hong Kong authorities. In 1983, the Hong Kong authorities stated that he had Paraguayan and Tongan passports in his possession. In March 1984, his Singapore citizenship was revoked. His fortune was reported to have been founded on buying cheap land in the New Territories during the 1974-75 property slump. He had worked for Chung Ching-man, a property developer and hotel owner. Chung was firstly, George Tan's mentor, then partner and eventually his enemy.

George Tan managed to get to know the Board members of BMF very well. It was through the loans from BMF that the Carrian Group managed to grow, as the Enquiry Committee

investigating the scandal said, "There might not have been Carrian without BMF" (Lim, 1986; 6).

It was reported by the Lorrain Osman Appeal Committee in Britain in 1992 that George Tan was acting as a private broker and financier for Tengku Razaleigh, the first Chairman of BBMB and then Finance Minister of Malaysia in 1976. The Committee noted that in a letter dated 30 May 1980, George Tan gave Razaleigh shares which were expected to be worth about HK\$50 mil. within four years (LOAC, 1992; 11-12). The Committee also claimed that this letter showed the authority for the loans to the Carrian Group came from Tengku Razaleigh (see Appendix 3.4a, 3.4b & 3.4c).

b. Kamarul, the Group Chairman of BBMB until 9 February 1982

Kamarul was educated as a lawyer in England. On his return to Malaysia, he set up his own law firm and was also active in UMNO politics. He was appointed Senator between 1974 and 1980. When Tengku Razaleigh became the Finance Minister in 1976, Kamarul was made the new executive chairman of BBMB. During his tenure, large-scale lending to the Carrian Group began. He denied responsibility for loans made by BMF to Carrian as they were not discussed at the parent bank board meetings. He alleged that Bank Negara must have known and approved the loans made by BMF. He also alleged that the loans of the size given to Carrian "ordinarily required ministerial acquiescence" and warned that "three or four Carrian-like problems are looming within Malaysia during the 1980s" (FEER, 27/10/1983). He claimed that he met George Tan outside work only at cocktail

parties.

- c. Ibrahim Jaafar, the General Manager of BMF until 31 August 1984 and Chief Representative of BBMB until June 1985

Ibrahim was in charge of day to day operations of BMF. He alleged that he was not on the board which made all major loan decisions of BMF. He first met George Tan in mid 1978. His relationship with George Tan was very close. In December 1979, Ibrahim was appointed as General Manager of Knife & Dagger by the two directors of the company i.e. George Tan and Carrie Woo. The scripts of the issued shares were deposited with Ibrahim. Ibrahim also made a gift of a Mercedes Benz car to George Tan as a new year present paid from the funds of Knife & Dagger. Ibrahim was also given a Rolls Royce car for his personal use. One of the loans he received from Wing Lung Bank was guaranteed by Knife & Dagger. He introduced George Tan to his board members sometime in mid 1979.

- d. Lorrain Osman, the Director of BBMB and BMF until 31 October 1983

He was educated as a lawyer at Cambridge and was called to the Bar in England before returning to Malaysia to practise as a lawyer. He was particularly close to Tengku Razaleigh. He was appointed to the Board of BBMB in 1966. He had also been Chairman of Bumiputra Merchant Bankers and Bernama, the national news agency. He became Chairman of BMF in 1977. Beside these appointments, he had his own group of

companies, the Aspatra Group, whose interests included motor cycles, food, textiles, orchids and oil industry equipment. He was addressed as "Uncle Lorrain" by George Tan instead of the usual formal address of "Mister Osman". This signified that George Tan and Lorrain Osman were friends. Any requests for loans by George Tan were made directly to Lorrain Osman, Hashim, the other Director of BMF or Rais, the alternate Director, rather than through the management of BMF. Once a request was approved, George Tan would instruct Ibrahim to release the sum requested. The implication was that the relationship between Lorrain and George Tan was very close.

e. Hashim, the other Director of BBMB and BMF until 31 October 1983

Hashim was a former colleague of Tengku Razaleigh in Belfast University in the late 1950s. He was trained as an accountant and joined the bank when Tengku Razaleigh was the Chairman. He became the Executive Director the year Tengku Razaleigh became the Finance Minister in 1976. He was also a senior member of UMNO. He claimed that when Musa Hitam had beaten Tengku Razaleigh to the post of Deputy Prime Minister in 1981, Musa told him that he could stay in his job provided he did not oppose any loans proposed by Rais, the alternate Director of BMF, who was a personal friend of Musa (FEER, 29/1/1987).

He was introduced to George Tan by Ibrahim in mid 1979. The holding company of Hashim and his wife, Silver Present, dealt with shares on the Hong Kong market. One of the shares it dealt with substantially was shares of the Carrian



Investments Limited (CIL). The deals were mainly between Silver Present and Knife & Dagger. These deals were also linked to another George Tan company called Perak Pioneer Limited. As stated above, requests for loans by George Tan were made directly to Hashim if Lorrain Osman was not available.

f. Rais, the Senior General Manager of the International Banking Division of BBMB and the alternate Director of BMF until 31 October 1983

The Inquiry Committee could not find Rais's appointment as alternate Director of BMF in any Board resolution or document. Rais replied that he was "orally appointed" by Hashim (NST 5/11/1984). He was introduced to George Tan by Ibrahim in mid 1979, just before BMF gave the first loan to the Carrian Group. The relationship between George Tan and Rais became very close by early January 1980. Rais relied on the advice of George Tan when investing in CIL shares through his holding company, Hi-heated. Rais gave a Daimler car costing HK\$600,000 to George Tan from the proceeds of the sales. Requests of loans by George Tan were made directly to Rais when Lorrain and Hashim were not available.

g. Henry Chin, the Assistant General Manager of BMF until 31 October 1983

There were incidents to show that Henry Chin frequently complied with the requests made by George Tan. There was also evidence that George Tan was 'lending' CIL shares to Henry Chin for his use.

**h. Jalil Ibrahim, the Assistant General Manager of BMF until 18 July 1983**

Jalil Ibrahim was the BBMB auditor, seconded to BMF in early 1983 to "put BMF in order", but who was murdered on 18 July 1983. He was strangled with a belt and his body was found two days later in a banana grove. His death acted as a catalyst for enquiries into the BMF scandal.

**i. Staff members of BMF**

Between December 1981 and January 1982, George Tan gave one million CIL shares, followed by another million, to the staff members of BMF. George Tan was also giving tips to the staff members as to when to buy or sell CIL shares and Grand Marine Holdings shares. The relationship between George Tan and the staff members could be considered very close. Loans to the Carrian Group were not recorded or documented according to proper procedure as with the other loans.

**j. Nawawi, the new Chairman of BBMB**

Nawawi was appointed the new Chairman after the resignation of Kamarul on 9 February 1982. He was not implicated in any of the corrupt dealings with Carrian.

**4. Highlights of the BMF case**

The BMF scandal could be divided into three important phases:

1. **The Concerted Plan** - To inflate the share prices of the Carrian Group with the help of Mai Hon, a public-listed company and the acquisition of Gammon House;

2. Furtherance of the Concerted Plan - The purchase of Grand Marine Holdings and the provision of cash flow for the Carrian Group;
3. Obtaining adequate securities by BMF for the loans to the Carrian Group and the restructuring scheme for Carrian when it was facing liquidity problems.

BMF began to give loans to the Carrian Group from 3 July 1979 to 3 October 1983 (see Appendix 3.5a, 3.5b & 3.5c). No enquiries were ever made into the background of George Tan before these loans were given. At that time, George Tan was a bankrupt by order of the High Court of Singapore.

Most of the loans given to the Carrian Group had no proper documentation, board approval or collateral. Collateral could be just a personal guarantee from George Tan, post-dated cheques from the Carrian Group which, when expired, were reissued, or quoted and unquoted shares and warrants. Proper records were not kept. The records of BMF could also differ from those of the Carrian Group.

The funds for these loans were met by the BBMB head office in Kuala Lumpur as well as its international branches and borrowing from other banks.

The principal lenders of Hong Kong dollars were Malayan Banking Berhad (HK\$42 mil.), Sanwa Bank (HK\$15 mil.), Lloyds Bank (HK\$15 mil.), Sumitomo Bank (HK\$14 mil.) and Baring Brothers (HK\$12 mil.). These five banks provided HK\$98 mil. or 22% of BMF's Hong Kong dollars requirement.

BMF's American dollars requirement were largely met by

other branches of BBMB i.e. BBMB New York (US\$41 mil.), BBMB Singapore (US\$101 mil.), BBMB London (US\$210 mil.), BBMB Kuala Lumpur (US\$90 mil.) and BBMB Bahrain (US\$98 mil.). These five branches together provided US\$540 mil. or 69% of BMF's borrowing in the American dollars as at 31 October 1982 (NST, 4/9/1986).

#### **4.1. The Concerted Plan**

##### **4.1.1. Loans of US\$292 mil. to Plessey Investments Limited from 19 December 1979 to 25 June 1980**

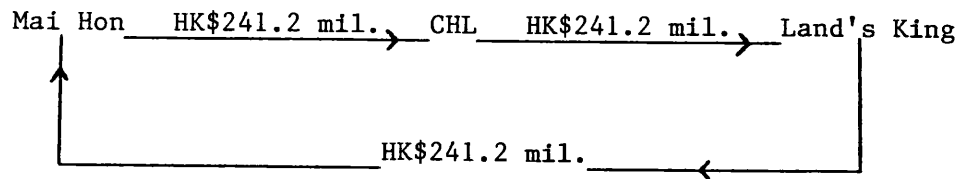
Between 19 December 1979 to 25 June 1980, a sum of US\$292 mil. (the largest loan ever given out by BMF and BBMB) was released to Plessey Investments Limited (PIL), a HK\$2 company, i.e. a company registered with a paid-up capital of only HK\$2 (Aliran Monthly, March/April 1986). PIL was under the control of George Tan. PIL was incorporated to receive funds from BMF for the implementation of the "Concerted Plan". The plan was to use funds from BBMB to make money in Hong Kong during the start of the property boom. This plan involved:

##### **a. Take over of a company called Mai Hon**

Once Mai Hon was taken over, the price of its shares was inflated on the Hong Kong stock market by the timely disposal of three Mai Hon assets to Carrian Holdings Limited (CHL) at high profits to Mai Hon and then by injecting five CHL assets into Mai Hon at a profit to CHL. For example, one of the Mai Hon assets bought was the Metropolitan Bank Building. The Metropolitan Bank Building was bought by Mai

Hon for HK\$64,308,940. Mai Hon then sold the Metropolitan Bank Building to Land's King, a subsidiary of CHL, for HK\$268 mil.. Mai Hon made a loan of approximately HK\$241.2 mil. to CHL. CHL then made a loan of similar amount to Land's King. Land's King paid Mai Hon the balance of the purchase price. See Diagram 1.

Diagram 1



These transactions were all a matter of book entries. There were no cash movements for the sale and purchase of the Metropolitan Bank Building. Even so, a profit of HK\$204,509,343 was recorded in the books of Mai Hon. These false representations helped to inflate the share prices of Mai Hon.

Between 30 November 1979 to 31 December 1979, share prices of Mai Hon rose from HK\$1.52 to HK\$5.60. After Mai Hon was taken over by CHL on 28 December 1979 and renamed Carrian Investments Limited (CIL), it went up to HK\$6.50 on 31 January 1980;

#### **b. Buying and selling of Gammon House**

Gammon House was bought by the Carrian Group when the Minister of Finance of Malaysia, Tengku Razaleigh, proposed the purchase of Gammon House as a centre to house the operation of various Malaysian agencies in Hong Kong.

Carrian had claimed that it had agreed to act as agent for the Malaysian Government, on the authority of Tengku Razaleigh, for the purchase. It was bought through Extrawin, a HK\$2 company. There was plan to sell Gammon House to the Malaysian Government at a quick profit of US\$50 mil.. The plan, however, failed as the Malaysian Government eventually decided to purchase Lap Heng Building. It should be pointed out that the Lorrain Osman Appeal Committee found out that Lap Heng Building could also be purchased by the Carrian Group on behalf of the Malaysian Government. The Committee had received a copy of a letter by PIL which seemed to suggest so. A copy of this letter is enclosed in Appendix 3.6. This letter suggested illegal agreement was involved;

**c. To create an image for the Carrian Group**

An image that the Carrian Group was always successful in making profits was created by the buying and selling of assets referred to in (a). This was done with the cooperation of Mai Hon which bought back the assets sold to CHL at a high profit to CHL. Mai Hon did not disclose that at the time of acquisition of the assets, it was already a subsidiary of CHL. George Tan and associates were eventually charged with conspiracy to defraud the shareholders before the High Court in Hong Kong.

The funds needed in the "Concerted Plan" were mainly financed by BMF. BMF received the funds from the head office of BBMB in Kuala Lumpur and its international branch network. On 16 June 1980, BMF, as lender, entered into a

loan agreement with PIL and Extrawin, as borrowers. The US\$292 mil. loan was broken up into two parts i.e. US\$152 mil. to Extrawin and US\$140 mil. to PIL. The securities offered would be equitable mortgages over Gammon House and the Metropolitan Bank Building for US\$140 mil. and US\$152 mil. respectively, followed by legal mortgages of the two buildings, the guarantee of George Tan, deposit of all share certificates and other marketable securities of Extrawin and PIL. However, the purchase of the Metropolitan Bank Building was only completed on 21 June 1980 and the purchase of Gammon House took place on 10 July 1980 i.e. after the loan agreement was completed on 16 June 1980. Thus, BMF actually had no legal mortgage of these properties before the purchase agreements were completed.

Extrawin was used to acquire Gammon House at a negotiated price of HK\$998 mil. (approximately US\$200 mil.). It was to be resold to the Malaysian Government at US\$250 mil.. Extrawin did submit a loan application of US\$140 mil. to BMF to finance the purchase of Gammon House on 10 January 1980. (This loan had already been approved on 16 December 1979 i.e. before receiving the loan application). The Board of BMF met the following day. However, the Board approved not this loan application, but another loan application by Carrian Joint Venture Limited for a loan of US\$32 mil. to part finance the purchase of Gammon House at the price of US\$250 mil.. This was accomplished with the cooperation of the Board and management of BMF to let the Malaysian Government believed that Gammon House was purchased at the price of US\$250 mil.. However, when the Malaysian Government

eventually decided to purchase Lap Heng Building instead, Extrawin was left with the responsibility of completing the purchase of Gammon House. (As mentioned earlier on, Lap Heng Building could be purchased by PIL on behalf of the Malaysian Government). The financing of the purchase of Gammon House was done in a roundabout way by PIL. See Diagram 2.

Diagram 2

BMF → PIL → Max Entry → Extrawin

Maximum Entry Limited (Max Entry), a HK\$2 dormant company, was set up by George Tan to receive funds from PIL to on-lend to Extrawin. In the books of Extrawin, the funds it received were stated as loans from shareholders and Max Entry. Two possible reasons for this arrangement were: a) to cover-up the fact that such a large sum of money came from BMF to only one particular customer i.e. PIL or b) to disguise the true identity of the relevant principal which may be either PIL or persons having interest in PIL. At the Land Office and the Registry of Companies, Max Entry was shown as mortgagee of Gammon House.

When the utilizations of the US\$292 mil. were traced, it was found that part of the money was used to invest in gold coins, to repay back interests on outstanding loans to BMF, to repay back loans of other subsidiaries and for investment in shares. Repayments of the Carrian debts could be seen to come from the money borrowed. It could be



concluded that a lot of the transactions of the Carrian Group were by the manipulation of loans and accounts.

On 19 March 1981, a loan of HK\$8 mil. to PIL was approved by Hashim. The money was remitted to United Asian Bank in Kuala Lumpur for the account of NETP, solicitors of Lorrain Osman. This was a case of corruption and was being investigated by the police in Malaysia and Hong Kong.

On 17 September 1984, BBMB filed a petition in the Hong Kong High Court to wind up PIL for non-payment of loans. George Tan contested the petition. One of George Tan's allegations on several occasions, in writing as well as under oath, was that BBMB was the major shareholder of PIL. There was no denial from BBMB of these allegations.

The Committee of Enquiry set up by BBMB submitted a memorandum to the Financial Secretary of Hong Kong on 5 April 1985 to appoint an inspector to investigate the affairs of PIL as there was clear and sufficient evidence that the business of PIL was conducted with intent to defraud its creditors including BMF or for a fraudulent and unlawful purpose.

#### **4.1.2. Purchase of two floors of Metropolitan Bank Building by BMF**

On 31 December 1980, BMF went on to "window dress" its accounts to show a reduction of the outstanding loans to PIL and the Carrian Group by agreeing to purchase two floors of the Metropolitan Bank Building belonging to the Carrian Group for HK\$200 mil.. The entire seventeen floors of the Metropolitan Bank Building was bought at a price of HK\$268

mil. half a year ago. These two floors were resold back to the Carrian Group which nominated two of its companies, Extragold and Extradollars (subsidiaries of CHL), as the purchasers at HK\$200 mil. plus interest. This again was financed by BMF. As for securities, a first legal mortgage of the two floors of the Metropolitan Bank Building in favour of BMF was registered at the Land Office on 3 April 1982. However, on 22 April 1983, another creditor of the Carrian Group, West LB Asia Limited also registered a first legal charge of the two floors at the Land Office as security for a loan of HK\$100 mil. to CHL. This led to a legal dispute between West LB and BMF on 23 November 1983.

The rest of the Metropolitan Bank Building floors except the ninth floor were bought by other Carrian companies or Carrian associates. The resale of each floor was financed by BMF.

#### **4.2. The warning of Touche Ross**

With such a large amount of money being loaned out to the Carrian Group, it would be very surprising if the accountants of BMF did not notice something was amiss. Around June 1980, Touche Ross, the auditor of BMF, sent a letter to BMF on the overconcentration of loans to the Carrian Group, but was told that all these loans were given out on a secured basis and with full Board approval. Thereafter, Touche Ross refrained from commenting on these loans. However, Touche Ross alerted Hanafiah Raslan & Mohammad, the auditor of the parent bank, to this problem. According to an internal memorandum from Arthur Tse of

Touche Ross to Mat Noor, a senior partner of Hanafiah Raslan & Mohammad, dated 13 April 1983, he stated "...we have refrained from commenting on the unduly large portion of loan portfolio to Carrian and associates. It is because we were politely told that it was a management matter, not really an audit matter. In view of the sensitiveness of the situation, we thought that the best course was to keep you informed so as to let the parent bank monitoring the situation..." (Lim, 1986; 35).

Mat Noor then informed Kamarul, the Chairman of BBMB, that the total sum advanced to the Carrian Group as at 30 June 1980 was HK\$1,658 mil., equivalent to 78% of total advances to all customers. It was recommended that advances should be spread out and not concentrated on one customer, considering the risks involved. Kamarul was kept informed all the time by Mat Noor of the development and problems of BMF.

Mat Noor also informed Kamarul that on 17 May 1980, CHL filed with the Registrar of Companies in Hong Kong, a memorandum of deposit of security in favour of Bank of Communications Limited in respect of overdraft banking facilities granted to Ibrahim, the General Manager of BMF, by Bank of Communications for HK\$1 mil.. Kamarul was asked to investigate the case as corruption might be involved. However, no action was taken.

Kamarul had never admitted that the alleged meeting took place between him and Mat Noor.

#### **4.3. US\$580 mil. loan to further the "Concerted Plan"**

Between 27 August 1981 to 12 December 1982, BMF continued to release a series of Term loans and Money Market loans totalling US\$580 mil. to George Tan and the Carrian Group. Term loans were usually repaid in level amounts over the period of the loan, although often there might be a large final 'balloon' payment or just a single 'bullet' payment at maturity. The banks would accommodate repayment patterns to the anticipated cash flows of the borrowing firm (Brealey & Myers, 1991; 805-806). Money Market referred to the lending and borrowing of short-term funds involving debt or loan instruments up to one year's maturity. The terms of transaction were discussed and arranged by telephone, and supporting documents and payments were sent by mail (Ranlett, 1977; 243). Money market loans should be confined strictly to financial institutions.

The final series from the total US\$580 mil. loan, a sum of US\$37.5 mil., was released to CHL at the time when it was known in the financial community in Hong Kong that the Carrian Group was having liquidity problems. BMF should have been very cautious about lending money to the Carrian Group. This loan was also released at a period when BMF and the Carrian Group were trying to complete the October 4th Agreement (see sec. 4.9) where BMF tried to obtain adequate securities for its loans to the Carrian Group.

The total sum of US\$580 mil. was used to further the "Concerted Plan". It involved:

- a. the acquisition of Grand Marine Holdings Limited, a shipping company, by Carrian Investments Limited

(CIL) at HK\$800 mil.. This was to be resold to the Malaysian Government for HK\$1,000 mil. i.e. at a profit of HK\$200 mil.. Again, the plan failed when the Malaysian Government decided not to purchase it;

- b. the provision of the necessary cash flow for the Carrian Group.

#### 4.3.1. Acquisition of Grand Marine Holdings Limited

George Tan alleged that Grand Marine was acquired at the request of Rais, the alternate Director of BMF, on behalf of the Deputy Prime Minister of Malaysia, Musa Hitam. George Tan would then sell Grand Marine to the Malaysian Government at a profit of HK\$200 mil., but the deal fell through. Again, the loan was given in a roundabout manner through seven HK\$2 'shell' companies. Four of these seven 'shell' companies were not set up yet when the loans were given out by BMF. The securities provided were the deposit of Hong Kong public quoted shares (which were later transferred back to the seven 'shell' companies at the request of CHL) accompanied by valid transfer forms and seven letters of guarantee by George Tan. The shares were received by BMF months after the full release of the sum of US\$138 mil.. This sum was ultimately received by CHL. See Diagram 3.

Diagram 3



When the Grand Marine deal was traced back, it was found that only approximately US\$68 mil. was needed for the merger of CIL and Grand Marine. The loans, beside being used for the acquisition of Grand Marine, other shares and properties, repayment of loans and interests, were also used to purchase paintings, jewellery, Rolls Royce cars, decoration of personal residences and donations by George Tan, his family members and his close associates.

At the same Board meeting which approved the seven loans on 19 September 1981, it was noted that the outstanding loan of the Carrian Group had been reduced from US\$355 mil. in 1980 to US\$77.25 mil. as at 16 September 1981. This was not the case as part of the total loan had been 'reallocated' to show a reduction.

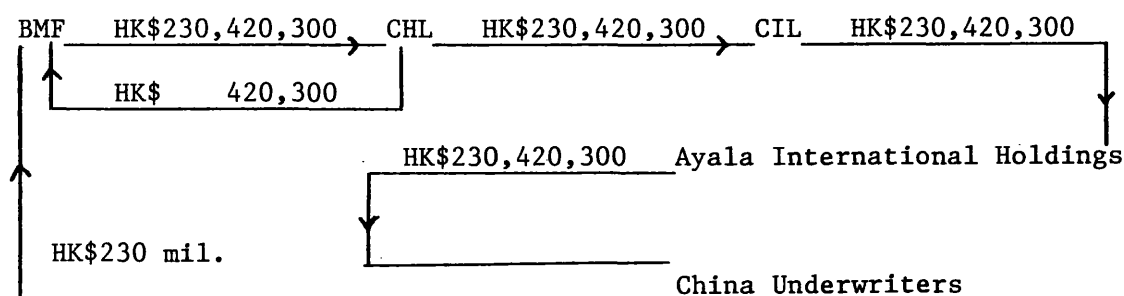
As at 31 December 1983, the balance including interest owing by the seven nominee companies to BMF was US\$167,248,176. BMF filed seven writs against George Tan as guarantor for the seven loans. The writs were served, but were retracted on the decision of the management of the parent bank, BBMB. The writs were then allowed to lapse. Besides this, no other action was taken by BMF against the seven nominee companies. This raised doubts about BBMB's sincerity in recovering its loans. Rais, the alternate Director of BMF, who approved the loan of US\$138 mil., repeatedly denied that he knew anything about the acquisition of Grand Marine.

On 3 January 1985, an order was made by the Hong Kong High Court to wind up Grand Marine.

**4.4. HK\$230 mil. to Carrian Holdings Limited in December 1981**

In December 1981, BMF assisted the Carrian Group in the purchase of a block of 48.82% of China Underwriters Life & General Insurance Company Limited shares from Ayala International Holdings Limited. BMF delivered a cheque for HK\$230,420,300 as a loan to CHL (see Diagram 4 below). This loan was released by Ibrahim, the General Manager of BMF, as Money Market loan with no Board's approval. CHL paid this amount to CIL who then paid Ayala International Holdings. At this time, China Underwriters was already under the control of George Tan. China Underwriters then deposited HK\$230 mil. with BMF to secure the loan of HK\$230 mil. from BMF to CHL. On 29 December 1981, CHL repaid BMF HK\$420,300 so that its loan from BMF would be the same as China Underwriters deposit with BMF i.e. HK\$230 mil. This sum of HK\$230 mil. was recorded in BMF's book as a deposit from China Underwriters.

Diagram 4



This sum of HK\$230 mil. was given out in such a roundabout way possibly due to Ibrahim's statement to George Tan that he had the authority without BMF Board's approval to authorise a loan of any amount if the loan was fully secured against cash. George Tan, then, made use of China Underwriters to receive the funds from BMF and deposited this fund in cash form with BMF to secure the loan for CHL.

The Hong Kong Crown Court charged George Tan, Bently Ho (George Tan's right hand man and Director of CHL) and the accountants of Price Waterhouse who were auditors to the Carrian Group with defrauding shareholders and potential shareholders of CIL. They were to stand trial in the Hong Kong High Court in January 1986.

#### **4.5. Audit of BMF accounts for 1981**

On 21 January 1982, Touche Ross, auditor of BMF, sent a telex to Hanafiah Raslan & Mohammad, auditor of BBMB, that it was unable to give audit clearance to the BMF account because there were problems with the adequacy of securities and lack of loan documentation. Total borrowing by the Carrian Group and its associates from BMF were approximately HK\$2.2 bil., representing approximately 58% of the total assets at 31 December 1981.

On 15 March 1982, Touche Ross completed the audit for the year ended 31 December 1981. It sent BMF a draft copy of their letter of recommendation which commented on the security position of the Carrian loans, the irregularities and inefficiencies in recording of loans, the improper ways the loans were documented and the valuations of properties



used as collateral for loans being done by the customers and not independent parties.

On the same day i.e. 15 March 1982, Rais, the alternate Director of BMF, signed a temporary letter of guarantee that BBMB, the parent bank, would assume all the liabilities, obligations and commitments of BMF. Rais cleared the matter with BBMB, in particular with Hashim, the Director of BBMB as well as BMF. A formal letter of guarantee would be substituted in future. The formal letter of guarantee was not issued eventually. With this temporary letter of guarantee, Touche Ross signed the audit of the accounts of BMF for the year ended 31 December 1981 without the submission of the letter of recommendation although the security position in relation to the Carrian loans was unsatisfactory. The letter of guarantee would protect Touche Ross from being sued by other financial institutions relying on the Annual Report. Touche Ross telexed Hanafiah Raslan & Mohammad to confirm the release of the accounts with the letter of guarantee from Rais. However, on 7 July 1982, Touche Ross decided to send a formal letter of recommendation to BMF. The contents of this letter were exactly the same as the draft letter of recommendation sent to BMF on 15 March 1982 as mentioned above.

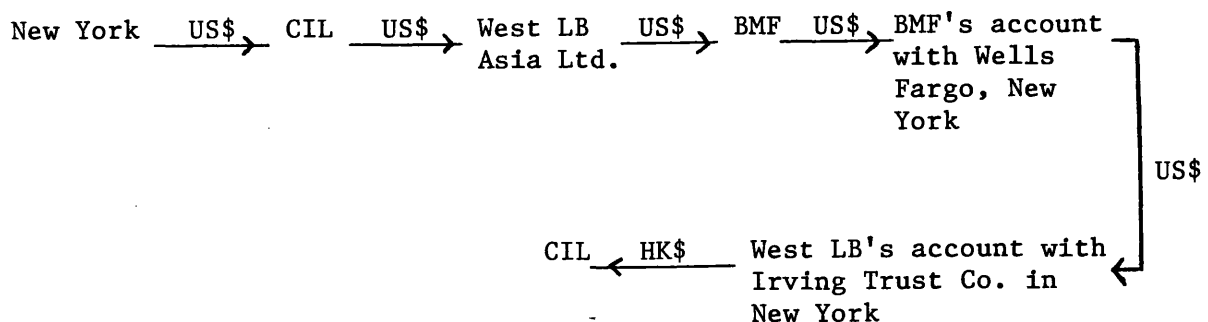
Hanafiah Raslan & Mohammad was kept informed by Touche Ross on the problems with BMF. With the information from Touche Ross and the issuing of the letter of guarantee from Rais, the responsibility of making sure that the accounts of BMF and BBMB were in order shifted to Hanafiah Raslan & Mohammad.

Peter Mark & Company, solicitors for BMF, had also repeatedly advised BMF that the outstanding loans were under-secured and the securities were of doubtful value. BMF did not do anything about it or direct its solicitors to do something. The warning from its solicitors did not deter BMF from continuing to release large sums of money to George Tan and the Carrian Group.

#### 4.6. US\$97 mil. to Carrian Investments Limited from 20 January 1982 to 17 February 1982

This is another example of how loans were released in a roundabout way. See Diagram 5. BMF would draw a draft on its BBMB New York branch account made payable to CIL. CIL then endorsed the draft to West LB Asia Limited. West LB would return the draft to BMF requesting BMF to send the proceeds by Telegraphic Transfer to its account with Irving Trust Company in New York. BMF would then instruct its correspondent bank in New York, Wells Fargo, to pay by Telegraphic Transfer, the proceed of the draft to the account of West LB with Irving Trust Company in New York. West LB would finally make the payment to CIL in Hong Kong dollars.

Diagram 5



Whenever each of the series of loans totalling US\$97 mil. was received by CIL, it would then be paid over to CHL on the same day. The loan was eventually transferred to the account of CHL at the request of Bently Ho, the Director of CHL, on 18 October 1982. This request was made eight days before CIL announced that it was facing liquidity problems. It should be noted that CIL was a public listed company and CHL was a privately held company with no published accounts. It would have been to BMF's disadvantage to have the loans transferred from a public listed company to a private company because the chances of securing the money loaned out to a private company that had collapsed would not be as good as that of a public listed company. There was no proper Board resolution from CIL, CHL or BMF authorising this transfer.

#### **4.7. HK\$100 mil. to Carrian Holdings Limited on 16 February 1982**

On 16 February 1982, BMF gave a loan of HK\$100 mil. to CHL. A portion of the loan plus interest was repaid on 10 June 1982 and the balance outstanding was HK\$80 mil.. George Tan requested that this outstanding sum be rolled over until 8 October 1982 when payment would be made in full.

On the same day i.e. 10 June 1982, BMF wrote to CHL requesting CHL to issue five post-dated cheques of HK\$13 mil. each and one post-dated cheque of HK\$15 mil. to expire between 12 July 1982 to 7 December 1982. This was for the half yearly closing audit of BMF. Upon completion of the audit, these cheques would be cancelled. Ibrahim confirmed

that the outstanding loan of HK\$80 mil. would be rolled over until 8 October 1982. This confirmed the very special relationship between BMF and George Tan. There was even mutual cooperation to mislead the auditor of BMF.

#### **4.8. Inspection of Bank Negara**

The central bank of Malaysia, Bank Negara, carried out an inspection of BMF in September 1982 when the accounts of BMF showed that the capital position of BMF and the securities for loans to the Carrian Group were not satisfactory. The inspection was completed on 30 September 1982. The inspection found serious defects in the management and control of BMF. The loans were concentrated on two main groups of companies i.e. the Carrian Group and the Kevin Hsu Group. Total lending of BMF on 30 June 1982 was HK\$5.042 bil.. The lending to the Carrian Group amounted to HK\$3.246 bil. which was approximately 64.4% of the total loans of BMF. The lending to the Kevin Hsu Group were HK\$0.755 bil. which were approximately 15% of the total loans. Thus, 79.4% of the total loans of BMF was to these two groups.

Bank Negara also pointed out that there was no specified limit on the Money Market loans to the Carrian Group. Moreover, Money Market loans should have been confined strictly to financial institutions according to normal banking practice. Quoted shares were used as securities in a number of the loans and these could not be considered as adequate securities because, if the company went into liquidation, these shares would be useless.

The inspection team also discovered that the directors

of BMF and the former Group Chairman of BBMB, Kamarul, were given consultancy fees on top of their normal directors' fees. This was not disclosed in the annual accounts of BMF. The fees paid amounted to HK\$0.8 mil., HK\$1.0 mil. and HK\$1.4 mil. in 1979, 1980 and 1981 respectively (Karim, 1989; 119).

The Governor of Bank Negara had a discussion with Nawawi, the present chairman of BBMB, on 12 November 1982. Nawawi pointed out that BMF was under the control of the Director of Financial Services and Management Committee of BBMB. The monthly reports were examined by Rais, the senior General Manager International Banking Division of BBMB as well as alternate Director of BMF. Nawawi agreed to take steps to improve the situation. An internal audit team was sent to Hong Kong to examine the operations of BMF. The Governor also requested BMF to provide certain documents and information to clarify the matter.

The Governor briefed the Prime Minister on the BMF case on 16 November 1982 and 5 January 1983. He wrote a letter to the Prime Minister on 2 April 1983 to "provide a clearer picture on the BMF crisis" and also to ask the Prime Minister for an appointment to discuss how to present the annual accounts of the Bank Bumiputra Group (Aliran, April/May 1986). Nawawi was also in regular and direct contact with the Prime Minister.

At the board meeting of BBMB on 22 November 1982, Nawawi reported the discussion with the Governor of Bank Negara and that the Prime Minister had been informed on the situation of BMF. The initial step taken by the board to

improve the situation of BMF was to set up a Supervisory Committee in BBMB, with Nawawi as the chairman. The role of the Supervisory Committee was to deal with loan applications to BMF. It was decided no loans would be released without the approval of the Supervisory Committee. The table below shows the people in the BBMB, BMF and the Supervisory Committee Boards. It should be noted that the same people may appear in different Boards.

Table 3.2

<u>BBMB</u>	:	<u>BMF</u>	:	<u>Supervisory</u>
	:		:	<u>Committee</u>
	:		:	
Nawawi	:		:	Nawawi
Hashim	:	Hashim	:	Hashim
Lorrain Osman	:	Lorrain Osman	:	(Lorrain Osman -
	:		:	invited to attend)
K. Munshir Ariff	:		:	
S.O.K. Ubaidulla	:		:	
Sulaiman Ninam Shah	:		:	
John K.D. Eu	:		:	
	:	Rais	:	Rais
	:	Ibrahim	:	
	:	Henry Chin	:	
	:		:	Wong Aun Phui
	:		:	Radzi

Even with this Supervisory Committee, loans were still released without approval.

The internal audit team gave their report to Nawawi on 10 December 1982. The findings were similar to that of the inspection team of the central bank. This report was circulated only to the members of the management committee of BBMB and members of the Board of BMF. Non-executive Board members were not given a copy of the report. In the meetings

of both BMF and BBMB, this report was not given much attention. In fact no discussion of it was tabled. In the meeting of BMF, the General Manager, Ibrahim, was given a copy of the report and was asked to comply with all the recommendations.

On 8 January 1983, one of the members of the internal audit team, Jalil Ibrahim, was seconded to Hong Kong for two years as personal representative of Nawawi, to "put things in order". He was appointed the Assistant General Manager (credit) in BMF. The accounts section, the loans section and the computer section would be under his supervision. The administrative section, the Money Market and Foreign Exchange section and the Trade Financing section would be under Henry Chin, the other Assistant General Manager. Jalil reported daily to Nawawi. One of the main duties of Jalil was to improve the securities of BMF. Thus, with Jalil's presence in Hong Kong, BBMB should know all the business transactions of BMF.

#### **4.9. BMF's attempts to obtain adequate securities and the October 4th Agreements**

On 18 August 1982, BMF wrote to George Tan that the total indebtedness of George Tan, the Carrion group and other borrowers introduced or associated with George Tan was US\$500 mil. BMF now appeared serious in its intentions to improve its security position.

George Tan had often alleged that the US\$500 mil. loan was not for the Carrion Group. It was used for the following:

- a. US\$250 mil. (HK\$1,358 mil.) used to bail out the Eda Group in March 1982;
- b. US\$133 mil. (HK\$800 mil.) used to acquire Grand Marine Holdings Limited on behalf of the Malaysian Government which eventually fell through;
- c. US\$116 mil. (HK\$700 mil.) incurred by some customers of BMF which the Carrian Group claimed to be introduced by them. When they did not repay the loans, the Carrian Group had taken up the liabilities.

George Tan alleged that CHL outstanding debts were only US\$35 mil.. George Tan was asked to sign a personal guarantee as additional security to cover this sum of US\$500 mil.. He signed the guarantee on 18 August 1982 and BMF appeared to be satisfied with the existing securities after obtaining the guarantee.

On 19 August 1982, the day after George Tan had given his guarantee for the total loan of US\$500 mil., BMF was requested by the Carrian Group to substitute the current securities held with a charge over the assets in the United States of America which were two properties i.e. the Oakland and Orlando properties. This event led to the signing of the October 4th Agreements where the charge over various Hong Kong assets of the Carrian Group was substituted with the United States assets of CIL. Once CIL took over the Hong Kong assets, it assumed the total debts that came with it of both the Carrian Group and the borrowers introduced by it to BMF. According to George Tan, these United States assets



were valued at US\$560 mil., but in actual fact, they were worth only US\$76 mil.. BMF approved of the exchange without double-checking George Tan's words. Deacons, the solicitor of the Carrian Group, was employed to act for BMF. This placed Deacons in a conflict position. Before obtaining the United States assets as securities, the Carrian Group requested the release of the shares of CHL and China Underwriters held by BMF. This was approved by Hashim, one of the directors of BMF, on 1 October 1982, pending the completion of the October 4th Agreements. Before the Agreements were finalised, BMF had already started releasing one security after another.

On 23 October 1982, George Tan wrote a memo to the General Manager of the Carrian Group that he had no intention of handing over the United States assets.

On 26 October 1982, the Carrian Group announced that they were facing liquidity problems.

By mid November 1982, the documents for the October 4th Agreements were still not finalised. BMF was concerned that the agreement might amount to a fraudulent preference over other creditors because this agreement was a separate agreement executed when the Carrian Group was facing liquidity problems and its debts were being rescheduled.

On 30 March 1983, Jalil, the Assistant General Manager of BMF who was seconded from BBMB, informed Ibrahim, the General Manager, that George Tan had not provided Deacons with the essential documents. Without these documents, the Agreement was worthless. It should be noted that there were other problems with using the United States assets as

securities. The properties had already been mortgaged. The Carrian Group interest in the Orlando property was less than 50%. Thus, the Carrian Group would need permission from its partners which was most unlikely to be obtained. Moreover, in the United States, taking security by way of a charge over shares in a property owning company did not prevent the property owning company from selling or encumbering the property. No further action was taken by both parties concerned to either cancel or enforce the October 4th Agreements. The result of the October 4th Agreements was a loss to BMF which had surrendered its existing Hong Kong securities without taking securities over the United States assets.

As the validity of the October 4th Agreements was unclear, Lorrain Osman, the Director of BMF and Ibrahim, the General Manager, insisted that replacement securities be made to cover the outstanding loans of Perak Pioneer Limited, Plessey Investments Limited (PIL) and the seven borrower companies which were customers of BBMB introduced by George Tan. This led to the signing of the January 26th Agreements. This agreement, too, did not materialise.

It would seem that George Tan was trying to make BMF give up its existing securities for the United States assets. However, in the light of the events that followed, BMF seemed willing to do so. While trying to obtain adequate securities for the existing loans to the Carrian Group, BMF was still releasing substantial sums of money to the Group when they had announced that they were facing liquidity problems on 26 October 1982. One of the loans, a sum of

US\$30.2 mil. was released to Paris Ride, a company incorporated on 29 December 1982 by Deacons, solicitor of CHL, as a vehicle to channel funds to CHL as part of the restructuring scheme. Since Paris Ride was incorporated by Deacons and not part of CHL, its records and files were not made available to the liquidators. The manner in which this sum was disbursed was intended to keep BMF's involvement a secret from the financial advisers of the Carrion Group and the other creditors. These loans were released to keep the Carrion Group afloat.

#### **4.10. The restructuring of the Carrion Group**

Wardley, a merchant bank (which was a subsidiary of Hong Kong & Shanghai Banking Corporation, Carrion's second largest creditor), was appointed to help prepare the restructuring scheme of CIL and CHL after the Carrion Group announced that they were facing liquidity problems on 26 October 1982.

The financial advisers stated that the restructuring scheme of CHL and CIL would require;

- a. the provision of funds for the continued running of the Carrion Group;
- b. the disposal of assets by the Carrion Group which included the United States assets of CIL.

On 25 February 1983, Hambro was appointed to act jointly with Wardley as financial advisers for CIL for the restructuring scheme relating to a total debt of approximately HK\$12 bil..

**4.10.1. The proposal to take 'good' overseas properties out of the Carrian Group**

On 13 January 1983, BMF wrote to George Tan stating that BBMB was not pleased with the restructuring proposal as once it was implemented, it would be tightly controlled by committees. BMF would then be unable to protect its interests.

On 15 January 1983, George Tan replied that 'good' properties in United States, Singapore, Philippines and Thailand would be taken out of the Carrian Group's possession to protect BMF's interests. The properties could be sold at a low price without affecting the debt rescheduling scheme. Part of the proceeds from the sale would be deposited with BMF for interest payment.

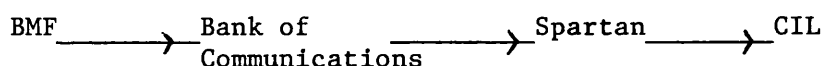
**4.10.2. The US\$40 mil. for the continued running of the Carrian Group**

Hong Kong & Shanghai Banking Corporation, Hong Kong's largest bank and Carrian's second largest creditor, had agreed to participate in the restructuring scheme by granting a revolving credit facility up to HK\$250 mil. if an equivalent HK\$250 mil. was provided by Carrian Nominees Limited, the controlling shareholder of CIL. BMF provided the funds in a loan of US\$40 mil. which was released by Ibrahim, the General Manager of BMF, on the instructions of the BMF Board, even though the Supervisory Committee had rejected the application of the loan. The sum was released in a roundabout manner between 4 February 1983 to 9 February 1983 as BMF was unwilling to participate in the scheme

openly. See Diagram 6.

On 4 February 1983, US\$38.5 mil. was released to the Bank of Communications Limited which, in turn, released the sum on the instructions of Carrian Nominees Limited to BBMB for the account of Spartan which set up an escrow fund for CIL.

Diagram 6



Spartan was used as a funding agency for CHL and CIL. It was acquired after the announcement of liquidity problems by CIL. The securities given were the entire issued and paid up shares of Carrian Nominees Limited and the personal guarantee of George Tan. It should be noted that these shares had already been deposited with BMF as security for existing loans.

On 9 February 1983, BMF released the remaining of the US\$40 mil. i.e. US\$1.5 mil. to the Bank of Communications which, in turn, released the sum on the instructions of Carrian Nominees Limited to Paris Ride. It should be noted that Carrian Nominees Limited was already insolvent by end of 1981. Thus, the first of the two requirements of the restructuring scheme i.e. to provide funds for the continued running of the Carrian Group was met by BMF.

#### **4.10.3. Jalil Ibrahim and the sale of the United States assets to BMF**

At the Supervisory Committee meeting on 8 May 1983, BMF had decided not to make any commitment openly to the restructuring scheme until its securities position was deemed satisfactory. This was because if BMF joined in the rescue plan, the proceeds of the sale of properties of the Carrian Group would go to the central pool rather than to BMF. The amount to be declared if BMF decided to participate in the scheme would be the loan of US\$35 mil. to CHL i.e. omitting the US\$500 mil. loan. At this meeting, it was also suggested that BBMB should finance a third party to acquire the United States assets of CIL which it did not get as securities when the October 4th and the January 26th Agreements fell through. The United States assets would be bought for US\$76 mil. They were valued at US\$262.5 mil. by Debenham Tewson & Chinook, the firm of valuers appointed by BMF on the recommendation of Hanafiah Raslan & Mohammad, the auditor of BBMB, with the approval of the central bank (see Appendix 3.7 for a copy of the letter from Debenham Tewson & Chinook). This deal was thought to be profitable. The Supervisory Committee noted that the purchase should be completed before BMF responded to the financial advisers of CHL and CIL in the restructuring scheme. BMF could then demand the return of the CIL shares which were released before the October 4th Agreements were completed and the documents of other securities because of the non-implementation of the October 4th Agreements by CIL.

On 20 May 1983, the Board meeting of BBMB agreed with

BMF to finance a third party to acquire the United States assets from CIL.. Thus, the second requirement of the restructuring scheme devised by Wardley i.e. the selling of assets by the Carrian Group was again met by BMF. The financing of the purchase was to be kept confidential on BBMB's instructions.

BBMB decided that Marmel Incorporated would be used as the company for taking a loan from BBMB and on-lend to the third party to acquire the United States assets. See Diagram 7. Yap Lim Sen, a Malaysian businessman, through Darton and Dragon Base (two 'shell' companies), was nominated as the third party. The agreement was signed on 15 July 1983.

Diagram 7



On 7 June 1983, Jalil was informed by Anthony Neoh, BMF's lawyer, that Levanthol, a group of valuers valued the United States assets at below US\$76 mil.. At that time, the sale and purchase agreement was still conditional and the contract could still be rescinded.

On 17 June 1983, the Transpacific trust was created to maintain the confidentiality of BBMB's involvement. This trust would be a shareholder of Darton. Darton was a Liberian company which appeared to be owned by Yap Lim Sen, but, in actual fact, was found in the investigation of the Committee of Enquiry to be owned and controlled by BBMB.

On 18 June 1983, Anthony Neoh submitted to Hashim, the Director of BMF, a report by Perini, a land and development company, on the United States assets. The report showed that the market value at June 1983 was only US\$59 mil. and that no American buyer would pay more than US\$56 mil. for the properties.

However, the deal was carried out even though BBMB was paying too much for the assets.

In the books of BBMB, this sum of money was recorded as a loan to Marmel. A total of US\$85 mil. was given to Marmel.

**4.10.4. Purchase of shares of China Underwriters Life & General Insurance Company Limited and Union Bank Hong Kong Limited and the murder of Jalil**

While BBMB was entering into the agreement to purchase the United States assets, a separate arrangement was taking place at the same time for a third party to acquire shares of China Underwriters and Union Bank (an associated company of CIL). This arrangement, as with the purchase of the United States assets by BBMB, was to keep Carrian afloat. BMF financed the deal as a Money Market transaction through Fleuret, a nominee company incorporated in the Channel Islands on 5 April 1982. Fleuret was owned by the New World Trust Corporation whose beneficial owners were two Malaysian businessmen, Mohd. Hussain Mohd. Yusuf and his brother, Mohd. Ariffin Mohd. Yusuf. The terms of offer were over-generous to the Carrian Group. The sale and purchase agreement committed Fleuret to:

- a. purchase China Underwriters shares for HK\$171 mil.;



- b. purchase of CHL debt of HK\$177 mil.;
- c. be liable to discharge CIL from the Crocker loan of US\$19,219,009.36.

At that time, the valuation of China Underwriters showed a substantial deficit of shareholders' funds. This meant that the value of China Underwriters shares was nil. This valuation was not circulated. Otherwise, it would have resulted in an immediate investigation by the Insurance Registrar leading to the liquidation and closing down of China Underwriters, followed by liquidation of the Carrian Group itself. Lorrain Osman, the director of BMF, was fully informed on this matter.

On 14 July 1983, Fleuret paid a deposit of HK\$6.3 mil. to Wardley as a shareholder. This was funded by BMF.

On 19 July 1983, a further sum of HK\$18 mil. was paid to Wardley. This payment came from the funds of US\$4 mil. provided by BMF to Fitarget for on-lending to Fleuret on 18 July 1983. This loan was released by the director of BMF, Lorrain Osman, without getting the Supervisory Committee's approval. Jalil, the Assistant General Manager of BMF, who was seconded from BBMB, tried to stop this loan and was murdered. He was strangled with a belt in a room at the Regent Hotel in Kowloon. His body was packed in a suitcase and dumped in a banana grove near Taipo in Hong Kong's New Territories. It was found two days later. Jalil's murderer, Mak Foon Than, who was a Malaysian citizen, made a statement to the police stating that the murder was carried out by a Korean who was instructed by George Tan to do so as Jalil

was obstructing a loan to Fitarget. He admitted that he did help dispose of Jalil's body. Mak also claimed that he had worked for several years for the Finance Minister of Malaysia, Tengku Razaleigh, and that he was in Hong Kong to collect money from businessmen on his behalf (Bowring & Cottrell, 1984; 139). Tengku Razaleigh vigorously denied that he knew Mak and that there was a conspiracy to "defame and destroy" him. However, when on the witness stand, Mak denied making the above statement to the police. He said he had never worked for Tengku Razaleigh and that, "We all knew him (Tengku Razaleigh) to be a good, honest and trusted minister" (Bowring & Cottrell, 1984; 139). Mak was eventually convicted of murder.

During the investigation into Jalil's murder, an unfinished letter to his wife and children was found. In his letter, he referred to the purchase of the United States assets by the bank. He stated that if the sale went through, he might be asked to go to the United States to manage the project (Lim, 1986; 22). Clearly, from his letter, there was something amiss about the whole deal and Jalil was very reluctant to be involved (see Appendix 3.8 for part of the letter reproduced in Lim's book, "BMF: Scandal of Scandals").

The completion of the sale and purchase of China Underwriters was to take place on 9 September 1983. However, this was hindered by: a) certain conditions still had not been complied with and b) the outbreak of a typhoon caused the closure of all offices. The completion date was postponed to 30 September 1983.

The sale and purchase did not take place as the Carrian Group had collapsed by then. The two payments made by Fleuret were forfeited to the Carrian Group. The total sum forfeited was HK\$24.3 mil..

On 7 October 1983, the Registrar General of Insurance filed a petition in the Hong Kong High Court to wind up China Underwriters.

#### **4.10.5. The outcome of the restructuring scheme**

On 31 August 1983, CHL signed an Accession Agreement to the debt rescheduling scheme pending the signing of similar Accession Agreements by all eligible creditors by 8 September 1983 which included Britain's Barclays Bank, Peking's Bank of Communications, Germany's Westdeutsche Landesbank and France's Banque Paribas. However, a substantial number of eligible creditors did not sign the agreements for some undisclosed reasons and the rescheduling scheme thereby lapsed.

On 10 September 1983, the Commercial Crime Department of the Police of Hong Kong conducted a search of the Carrian Group's offices because they had been accused of fraud. The raid was also understood to have been part of the probe into the murder of Jalil Ibrahim in July 1983 (FEER, 22/9/1983).

On 10 September 1983, the Commissioner of Securities convened a meeting of all interested parties to the restructuring of the Carrian Group. At the meeting, his memorandum dated 9 September 1983 was distributed. The main focus was the possible understatement of the debt owing by the Carrian Group to BMF. The Carrian Group was asked to

respond to this point. The Carrion Group had been declaring to their financial advisers with the cooperation of BMF: a) nil indebtedness to BMF regarding loans to CIL and b) US\$35 mil. unsecured and HK\$50 mil. secured loans to CHL.

On 23 September 1983, the Commissioner of Securities wrote to the Managing Director of the Carrion Group, John Marshall, requesting an explanation of the letter from George Tan to Lorraine Osman, the Director of BMF, dated 15 January 1983 which elaborated upon the removal of all 'good' properties in United States, Singapore, Philippines and Thailand from the Carrion Group for the protection of BMF's interests (see sec. 4.10.1). The Commissioner advised John Marshall that the restructuring scheme would not be possible if there was a separate scheme for a particular creditor.

At the same time, there was a dispute between the Carrion Group and BMF as to the amount owed. There were differences in the figures between those appearing in the Carrion accounts and those in the BMF's accounts. This was in reference to the loan of US\$500 mil. (see sec. 4.9). To resolve the dispute and to make the debt rescheduling scheme successful, George Tan proposed that he and his family companies would take up the disputed amount.

On 30 September 1983, BMF, in principle, accepted George Tan's proposal and agreed not to disclose the separate arrangements BMF had with George Tan to the financial advisers.

However, three days later i.e. 3 October 1983, George Tan and Bently Ho, George Tan's right hand man and Director of CHL, were arrested by the police together with some of

their legal advisers and accountants. They were charged with offences under the territory's Theft Ordinance. It should be noted that one of the solicitors of Carrian, John Wimbush, committed suicide by drowning himself in his swimming pool on 13 April 1983, when the Commercial Crime Bureau of the Hong Kong Police requested to interview him concerning certain of Carrian's deals.

On 8 October 1983, a winding up petition for CIL was presented in the Hong Kong High Court by a creditor of CIL, Bankers Trust. On the same day, Wardley and Hambro, the financial advisers of CIL and CHL resigned from their appointments.

On 10 October 1983, BMF filed a petition with the Hong Kong High Court to wind up CHL. The understatement of the Carrian debts and the discovery of several irregularities in the records of the Carrian Group led to the failure of the restructuring scheme and the collapse of Carrian.

BMF itself had committed offences when it:

- a. attempted to obtain assets of CIL and CHL as securities at the same time as the restructuring scheme. This was against the interest of and in fraud of the shareholders and creditors of CIL and CHL;
- b. misled the financial advisers of CIL and CHL by providing wrong information on the debts owing to BMF by CIL and CHL;
- c. tried to get a separate deal with the Carrian Group while the restructuring scheme was being carried out. This action was unethical and unlawful.

The Board meeting of BBMB on 31 October 1983 revealed the true nature of the loan of US\$40 mil., which was released without the approval of the Supervisory Committee to set up an escrow fund by Spartan for the restructuring of CIL. The loan was recorded in the books of BMF as a Money Market transaction given to the Bank of Communications and was reported as such by BMF to BBMB. It was agreed that an investigation should be carried out on the loan.

On the same day, Lorrain and Hashim, the Directors of BMF, resigned. The meeting of the Board of Directors of BBMB accepted the resignations. At the same meeting, a new Board of Directors was appointed. The first meeting of the new Board of BMF was held on 21 November 1983. It should be pointed out that the resignations were not valid as they could only be accepted by the Board of BMF if such a valid Board was in existence. If not, resignations could only be accepted by the shareholders of BMF. The appointments of the new members were also not valid. BBMB could not validly appoint directors to its subsidiaries. As Lorrain Osman and Hashim had resigned, only shareholders of BMF at a shareholders meeting could appoint new members.

On 15 December 1983, BMF commenced civil proceedings in Hong Kong against Carrian Nominees Limited as borrower and obtained summary judgement for the sum of US\$40 mil. plus costs. A Mareva Injunction was also obtained on the same day.

On 30 December 1983, BMF commenced civil proceedings in Hong Kong against George Tan as guarantor for the US\$40 mil. loan. George Tan contested the claim. According to George

Tan, the loan of US\$40 mil. was in fact investment of BMF in CIL using Carrian Nominees Limited to channel the funds as BMF wanted secrecy in this transaction. This was done pursuant to the scheme of financial restructuring being worked out by CIL's financial advisers. The investment was agreed at the same time when CIL's major banker, Hong Kong & Shanghai Banking Corporation agreed to contribute an equivalent sum in Hong Kong dollars. The financial restructuring scheme was altered and an escrow fund was set up. In implementing this scheme, the entire issued shares of Carrian Nominees Limited and Spartan were delivered to BMF. BMF did not answer the allegations made by George Tan. Instead BMF abandoned its application to the court to obtain Final Judgement against him.

On 17 July 1984, BMF obtained judgement against Carrian Nominees Limited for the total sum of US\$40 mil..

On 28 September 1984, BMF filed a petition in the Supreme Court of Hong Kong to wind up Carrian Nominees Limited on the ground that the judgement debt was not settled.

On 26 January 1985, BMF and BBMB filed civil suits in Kuala Lumpur High Court against Lorrain Osman and Hashim, the Directors of BMF, Rais, the alternate Director and Ibrahim, the General Manager to recover the sum of US\$40 mil. together with another sum of US\$7.5 mil. which was released to Fitarget, as damages arising from the mismanagement of BMF in granting these loans.

**5. Dealings of BMF Directors, General Manager and staff members and their holding companies in shares of Carrian Investments Limited and Grand Marine Holdings Limited**

The Directors, General Manager and staff members of BMF and their holding companies had made huge profits by dealing vigorously in shares of CIL and Grand Marine. They were able to do so because George Tan usually signalled when to buy and sell their shares in order to make a profit.

**5.1. Lorrain Osman and Twincrest**

Lorrain Osman was given power of attorney by Twincrest, a company incorporated on 14 August 1981 by Deacons, solicitors of CHL and CIL, to operate its bank account. Lorrain sold CIL shares and warrants purportedly on behalf of BBMB and Twincrest through Hoare Govett, a stock broker in Hong Kong. The proceeds from the sale of CIL shares and warrants were remitted in a roundabout way to NETP, solicitors of Lorrain Osman. Hoare Govett would remit the proceeds to BMF in Hong Kong dollars to purchase Malaysian dollars. BMF would then remit this sum in Malaysian dollars to BBMB for the account of NETP. See Diagram 8.

Diagram 8

Hoare Govett  $\xrightarrow{\text{HK\$}}$  BMF in  $\xrightarrow{\text{M\$}}$  account of NETP in BBMB  
Hong Kong in Malaysia

Apart from this roundabout method of remitting sums of money, a sum of M\$2,189,594.42 from the proceeds of the sale



of CIL warrants was remitted by Hoare Govett directly to BBMB on Lorrain Osman's instructions. This sum was then paid out to NETP on 26 November 1981. Lorrain had also instructed Hoare Govett to sell a total of 239,000 Union Bank shares between 1 December 1981 to 4 December 1981 on behalf of Twincrest. The proceeds were converted into Malaysian dollars and remitted to United Asian Bank in Kuala Lumpur for the account of NETP.

### **5.2. Hashim and Silver Present**

Together with his wife, Hashim had an investment company called Silver Present. Silver Present dealt extensively with CIL shares and warrants. In these dealings, Silver Present came into close contact with Knife & Dagger and Perak Pioneer Limited, companies of George Tan, through transfer of accounts and purchases and sales of CIL shares.

On 19 December 1981, CIL placed HK\$6 mil. with BMF as a Call Deposit, a form of Demand Credit which was payable whenever the account holder demanded repayment from the bank. In the books of BMF, it was recorded as being placed by CHL.

On 28 December 1981, BMF bought one million Grand Marine shares with the HK\$6 mil. on behalf of Silver Present.

On 31 March 1982, Silver Present recorded in its books that the sum of HK\$6 mil. was paid by a director.

### **5.3. Rais and Hi-heated**

Rais had an investment company called Hi-heated,

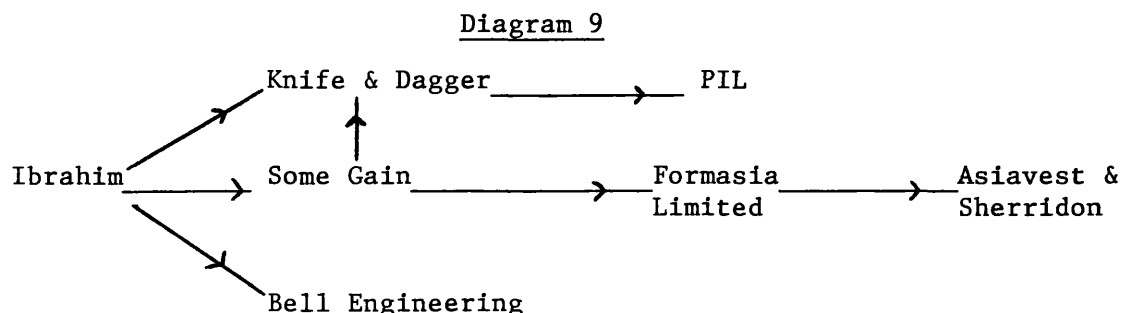
together with his wife. The company was incorporated on 21 December 1979 in Hong Kong, on the advice of George Tan. The principal activity of Hi-heated was trading of CIL shares and warrants. The decisions to purchase and sell shares were based on information supplied by George Tan. Rais made a profit of HK\$1,332,000 from his dealings in CIL shares and warrants through his company. Grand Marine shares were also purchased by Rais, but, on a much smaller scale.

#### **5.4. Ibrahim and Knife & Dagger and Some Gain**

Ibrahim was made General Manager of Knife & Dagger, a company belonging to George Tan and his secretary, Carrie Woo, in December 1979. Knife & Dagger dealt extensively in CIL shares. Through these dealings, Knife & Dagger came into close contact with Silver Present, a company belonging to Hashim.

On 16 June 1981, Knife & Dagger was appointed director of Plessey Investment Limited (PIL).

Ibrahim was also the beneficial owner of Some Gain and Bell Engineering. On 10 December 1981, Some Gain was appointed director of Knife & Dagger. Some Gain was also a shareholder of Formasia Limited and Formasia was a shareholder of Asiavest and Sherridon. See Diagram 9.



It could be seen that Ibrahim had very strong business connection with the Carrian Group which he did not declare to the Board of BMF and BBMB.

On 29 December 1981, CHL deposited a sum of HK\$3 mil. with BMF. On the same day, BMF bought 500,000 shares and warrants of Grand Marine amounting to HK\$3 mil. on behalf of Some Gain. In the books of BMF, the HK\$3 mil. was recorded as being withdrawn whereas in the books of CHL, the HK\$3 mil. was written as being transferred to PIL.

#### **5.5. Staff members of BMF and Heyren**

Heyren was incorporated in Hong Kong in December 1981. The three original directors were:

- a. Mansor Saat, the Chief Dealer of BMF;
- b. Ng Kai Wong, the Senior Clerk of BMF with the Credit Department;
- c. Leung Kwok Wing, the Senior Clerk of BMF with the Money Market Department.

The objective of Heyren was to hold CIL shares as a "pension fund" for the local staff members of BMF. The first one million CIL shares of Heyren was a 'gift', i.e. given without any payment in return, from George Tan in December 1981 to all staff members of BMF. When the price of CIL shares dropped drastically, the one million CIL shares became worthless. George Tan made a further 'gift' of one million CIL shares to Heyren and again these shares were 'lost'. Heyren actually incurred debts as a result of its dealings in the CIL shares.

The staff members of BMF also dealt with Grand Marine shares after being informed by George Tan that Grand Marine had been sold to the Malaysian Government at a huge profit to CIL. However, when the sale fell through, they lost money on the Grand Marine shares.

#### **6. Loans to the Eda Group**

Chung Ching Man was the ultimate controlling shareholder of Eda Investments Limited (EIL). Loans were given to Chung, without any evaluation, mainly because of the warm recommendation of George Tan. This was another confirmation of the very close relationship between George Tan and BMF.

On 25 August 1981, EIL made an application to BMF for a loan of US\$60 mil. to be used as working capital to strengthen the liquidity position of the company. The securities offered were the personal guarantee of Chung and the deposit of EIL and CIL shares as shown below:

167,370,040 EIL shares;

7,593,171 EIL registered warrants;

11,200,000 CIL shares;

5,327,287 CIL registered warrants;

10,886,855 EIL shares (known as the Etek shares);

27,079,000 EIL shares (known as the Street Named  
shares).

A day before the loan was approved, two sums of HK\$3.6 mil. each were paid by Chung's wife to Silver Present, a company owned by Hashim and Knife & Dagger, a company where

Ibrahim was in control.

On 21 May 1982, Chung wrote to Ibrahim that EIL noticed the Etek shares had been disposed of in the market and that BMF as mortgagee was not entitled to dispose of shares deposited as securities other than on exercise of BMF's power of sale. As with the Street Named shares, Chung alleged that BMF had short sold at least 19,500,000 of these shares in late 1981 without EIL's consent.

On 2 August 1982, the BMF Board noted a shortfall of US\$3.55 mil. in value of EIL shares. The board decided that Touche Ross should investigate EIL's allegations. Touche Ross found faults in the control over customers' securities pledged with BMF, in particular the safekeeping of share certificates.

Chung alleged that Ibrahim had misappropriated EIL shares and reported him to the Independent Commission Against Corruption in Hong Kong on 23 August 1982 and 15 August 1983.

On 28 August 1982, EIL issued a writ with the Hong Kong High Court against BMF for the alleged disposal of EIL shares. BMF filed its defence on 21 September 1982. BMF also filed a writ against EIL for US\$36 mil. and another writ against Chung as the guarantor. All these actions were stayed when EIL was wound up on 26 February 1983.

On 1 July 1983, BMF submitted a memorandum to the liquidators of EIL with the proof of debt and suggested a commercial settlement be reached on the dispute between BMF and EIL.

On 9 July 1985, the liquidators recommended action

against BMF. One of the claims was that BMF fraudulently traded certain EIL shares held as securities in the open market in breach of the covenant of the Pledge Agreement entered into between EIL and BMF.

The Committee of Enquiry set up by BBMB after the collapse of the Carrian Group suspected that there was a private arrangement between Ibrahim and George Tan whereby BMF would lend 15,001,855 EIL shares to CHL.

#### **7. Loans to the Kevin Hsu Group**

On 2 August 1982, the Board of BMF noted that the Kevin Hsu Group had been adversely affected by the fall in property prices and the interests on outstanding loans had not been repaid. Even so, loans were still given to the Kevin Hsu Group.

As at 31 December 1983, the outstanding loans of the Kevin Hsu Group plus interests were HK\$497,594,521.65 and US\$82,679,190.49.

#### **8. Loans to Asiavest And Sherridon**

The people involved in these two companies were Malaysian businessmen and businesswomen as well as the Minister of Finance, Tengku Razaleigh and members of his family.

Ibrahim, the General Manager of BMF, had an interest of 16.7% in Formasia which in turn was a shareholder in Asiavest and Sherridon. He did not declare his interest initially.

As at 31 May 1985, the loans outstanding was US\$2 mil.

from Asiavest and HK\$3.575 mil. from Sherridon.

**9. Payments and benefits to Malaysians And Malaysian companies**

These benefits were disputed by the named Malaysians. However, they did not supply any proof to exonerate themselves.

**a. Payment of M\$1.5 mil. to Siew Lam Koong Sendirian Berhad**

Siew Lam Koong Sendirian Berhad was incorporated in Malaysia on 8 September 1981, on the instructions of George Tan, as a vehicle for investment activities by George Tan in Malaysia. The paid-up capital of Siew Lam Koong was M\$2. Skrine & Company acted for this acquisition. The two partners of Skrine & Company, James Joseph Puthucheary and Anathan Kasinather, became directors of Siew Lam Koong until 16 August 1982. The company name was changed to Rudah (M) Senderian Berhad on 9 September 1982.

On 12 August 1982, George Tan instructed Jed Tan by telex to obtain a bank draft of M\$1.5 mil. payable to Siew Lam Koong and to be delivered personally to Hashim, the Director of BMF. The funds were to be paid from Carrian Travel Services Singapore (Pte.) Limited. On 13 August 1982, the draft was delivered. On 17 August 1982, a sum of M\$1.5 mil. was paid out by Siew Lam Koong to AAY Holdings, a company incorporated on 26 November 1980, with an authorised capital of M\$250,000 and a paid-up capital of M\$2. The two shareholders of AAY were Mohd. Ariffin Mohd. Yusuf (see sec. 4.10.4) and Abdul Latif Abdul Hameed.

On 15 June 1983, Siew Lam Koong as lender and AAY Holdings as borrower, entered into a 'friendly' loan agreement (referring to the M\$1.5 mil.) free of interest for the period of six years. Repayment was to be made from the fourth year onwards in three equal instalments.

The reason this loan was given by George Tan was believed to be to build up a business relationship and goodwill with a Bumiputra businessman as he had plans to invest in Ariffin's companies and other Malaysian companies.

b. HK\$86,850 to Tengku Razaleigh

Tengku Razaleigh was the Minister of Finance of Malaysia at that time. This piece of information was found in one of the files of Ibrahim, the General Manager of BMF. The sum of HK\$86,850 was paid out from the funds of either Knife & Dagger or Silver Present for the purchase of travellers cheques for Tengku Razaleigh amounting to US\$15,000.

c. Payment of M\$0.5 mil. to Yunus Sudin

On 24 December 1981, CHL applied for a Bank Draft of M\$0.5 mil. to be paid to Yunus. The remitter was stated to be Gain Point Investments Limited. In the books of CHL, this payment was debited to the account of Plessey Investments Limited.

d. Payment of M\$950,000 to the Fleet Group

The Fleet Group is the investing arm of UMNO, the ruling party in Malaysia. A sum of M\$950,000 was paid out to



the Fleet Group from the funds of either Knife & Dagger or Silver Present. This piece of information was also found in one of the files of Ibrahim.

e. Pledge to pay US\$1 mil. to Ibrahim

A pledge to pay US\$1 mil. to Ibrahim was made by Haji Bustami Hj. Sharbani on 14 August 1979.

**10. 1993 - What actions have taken place?**

The legal proceedings against the Carrion Group and the Board of Directors of BMF began in Hong Kong in October 1983.

Lorrain Osman and Hashim were arrested on 7 December 1985 in London where they now lived and were held in custody following a magistrates court hearing on extradition warrants presented by the Hong Kong Government. Warrants were also issued against Rais, but he absconded to France and was outside the reach of extradition. The French Government refused to cooperate in the extradition order since there was no provision made for such an order between the French and the Hong Kong authorities. Lorrain Osman's counsel, Martin Thomas, said that, "The French Government on March 13, 1991, decided it would not allow Rais to be extradited to Hong Kong for trial. One of the central concerns was the involvement of the Malaysian Government in this affair". (NST, 15/7/1992). Ibrahim was granted immunity from prosecution in Hong Kong as he was the major witness in the trials.

Hashim agreed to be extradited to Hong Kong to stand

trial. He was found guilty and was sentenced to four and a half years jail by the Crown on 14 January 1987. On his appeal, his original sentence was doubled to ten years on bribery and fraud charges. He also agreed to repay more than M\$120 mil. to BBMB (NST 28/3/1987). He was released from Stanley Prison in July 1993 after serving seven years (South China Morning Post, 7/8/1993).

Lorrain Osman stayed on in London's Pentonville and Brixton Prisons for seven years to fight the extradition order on the ground that he feared for his life owing to close links with powerful figures in Malaysia (The Independent, 18/8/1993). His fears must have been real because he had not applied for bail despite his wealth. He had made seven habeas corpus application seeking release and a judicial review; all of which were turned down by the Courts. He became the longest-serving remand prisoner in Britain. In July 1992, the British Home Secretary, Kenneth Clarke, signed the order to extradite him to Hong Kong on the ground that he had produced no fresh evidence. The order came through in December 1992. Lorrain Osman was extradited suddenly without the knowledge of his wife, lawyers and supporters who included British Members of Parliament. One reason given was the fear of large-scale media attention at the airport (The Times, 17/12/1992). Another possible reason could have been to ensure his safety as he had often claimed that there were many who would seek to ensure that he never came to trial if extradited to Hong Kong; "Too many people have too much to lose. If I am allowed to prove my innocence, then their guilt will be obvious...I am prepared

to remain a remand prisoner at Brixton for 50 years if the alternative is facing a show trial or worse in Hong Kong" (The Times, 17/12/1992). His family members were not spared either. Mrs. Osman said that she feared for her life and had to be accompanied by two bodyguards whenever she visited her husband in prison (The Times, 17/12/1992).

In Hong Kong, he made a plea bargain and admitted guilt to one count of conspiracy to defraud BMF, BBMB and the Malaysians of US\$292 mil.. He was sentenced by the High Court in Hong Kong in June 1993 to one year jail (taking into consideration the seven years he served in Britain as well as the handing back of Hong Kong in 1997 to China). As for the remaining 15 fraud and corruption charges, the Court decided to drop them on 6 August 1993 (The Times, 7/8/1993 & South China Morning Post, 11-12/9/1993). On 17 August 1993, he was released after serving eight months of the one-year sentence. After being released, he returned to Britain. The Business Times claimed that he still had assets worth £40 mil. (Business Times, 23/11/1990). However, in the South China Morning Post International Weekly (11-12/9/1993), Lorrain Osman claimed that he was destitute and living off the charity of well-wishers. He also claimed that what little of his business empire remained in Malaysia was still frozen by the courts. The rest had been sold off over the years. He said his home in London was leased and he owned no property in the United Kingdom. His troubles are not over yet as the Malaysian Government is suing him for the US\$600 mil. it lost in the collapse of the property company while the Hong Kong authorities are chasing him for more than £1

mil. in court costs (The Sunday Times, 13/3/1994).

On 15 September 1987, George Tan and associates were acquitted on a charge of conspiracy to defraud in Carrian's 1981 accounts. The one and a half year trial cost the taxpayer HK\$50 mil.. The Deputy Director of Public Prosecutions in this case and also head of the Commercial Crime Bureau, Warwick Reid, was sentenced to eight years jail for corruption in his job as a law officer. George Tan still had to face trial on charges brought by BMF. He was released on a record bail of HK\$52 mil. in Hong Kong (NST, 24/3/1992). Meanwhile, he had been an active member of the Hong Kong business community. He was involved in billion-dollar property deals with mainland firms and was linked with Hongkong Macau Holdings in the purchase of Nine Queen's Road Central (South China Morning Post, 8/7/1993).

Ibrahim Jaafar was granted criminal immunities from prosecution in June 1985 by the jailed prosecutor, Warwick Reid, in return for 'cooperation' (LOAC, 1992; 12). He was also granted parallel immunity from civil prosecution by the Malaysian authorities. At the trial in the Hong Kong High Court in 1987, he admitted lying to all the investigating authorities, lawyers and auditors in relation to the case. He also admitted taking US\$21 mil. in bribes. He had broken all the terms of his immunities. However, Warwick Reid was still in charge and no action was taken against him. His immunities were also not revoked (LOAC, 1992; 12).

The Malaysian and Hong Kong police have started investigation again on the Carrian case. It would not be surprising if all charges against George Tan and associates,

Lorrain Osman and Rais Saniman are dropped because in only three more years Hong Kong will be given back to China. Moreover, 65% of the key and supporting documents are lost or destroyed (LOAC, 1992; 40) and key witnesses may not be willing to give evidence to a case which has political involvement.

### **Conclusion**

The BMF case centred on a subsidiary bank set up in Hong Kong in 1977. From the case study above, it seemed that the bank was set up from the very beginning to defraud its depositors money by its Board of Directors and General Manager with the collaboration of George Tan and his companies, the Carrian Group. Money was siphoned off from the bank in the forms of huge loans to the Carrian Group. The details of the BMF case outlined above were intended to give the reader a good idea of how big time frauds are perpetrated. It seemed that the internal control of the bank was very weak. The parent bank, BBMB, in Kuala Lumpur did not seem to monitor the operations of BMF. The central bank of Malaysia, Bank Negara, carried out an inspection of BMF in September 1982 and the inspection found serious defects in the management and control of BMF. However, instead of taking direct action himself, the Governor of Bank Negara had discussions with the Chairman of BBMB, the parent bank. The Governor also briefed the Prime Minister of Malaysia on the position of BMF. No significant action was taken to stop the loans to the Carrian Group. The whole case surfaced eventually with the murder of Jalil Ibrahim, a senior BBMB

auditor seconded to BMF. The initial reaction of the Malaysian Government was to proclaim that "there was no crisis" even though M\$2.5 bil. had gone missing. The Government tried to cover-up the scandal as much as possible, for example, by not wanting to publish the findings of the Committee of Enquiry into the case. It also introduced a new Official Secrets Act to stop the public from probing into the case. This case also revealed the weaknesses of the police and the Anti-corruption Agency in Malaysia which did not take any action. The BMF case gave the strong impression that there was a conspiracy between the Government, the police and the Anti-corruption Agency to cover-up the case and it is plausible that the reason was that a few politicians were involved in the scandal. The BMF case seemed to suggest that the police and the Anti-corruption Agency in Malaysia were not independent from the politicians.

The BMF case study generates the following questions for analysis in the next chapter i.e.:

1. Why was the background of George Tan not investigated before dispensing the loans, especially when he was already a bankrupt by order of the High Court of Singapore?
2. The parent bank of BMF, BBMB, should have been suspicious of the ways loans to the Carrian Group were documented and the collateral secured. Moreover, funds for these loans were met by BBMB as well as its international branches and borrowing from other banks.
3. Tengku Razaleigh, the then Finance Minister and Musa

Hitam, the then Deputy Prime Minister, were said to be involved in some of the illegal dealings of the Carrian Group. Why was there no investigation on them?

4. Was the Malaysian Government involved in the BMF scandal? The purchase of Lap Heng Building as mentioned in section 4.1.1 seemed to suggest there was some sort of agreement between PIL and the Malaysian Government with Tengku Razaleigh as the middleman.
5. Certain allegations made by George Tan during his trial, for example, that BBMB was the major shareholder of PIL (section 4.1.1) were never refuted by BBMB. Why?
6. Why did BMF make major purchases that were priced too high from the Carrian Group, for example, the Metropolitan Bank Building for HK\$200 mil. when the entire seventeen floors of the building were bought at a price of HK\$268 mil. (section 4.1.2)?
7. What roles did the auditors and lawyers of BMF and BBMB play in the scandal?
8. Why did BMF still issue loans to the Carrian Group when the financial community in Hong Kong knew that it was having liquidity problems (section 4.3)?
9. What was the real purpose of the October 4th Agreements and the purchase of shares of China Underwriters and Union Bank (sections 4.9 & 4.10.4)? Was it to secure adequate collateral for the loans of the Carrian Group or was it to keep the Carrian Group afloat?
10. How was it that the Governor of the central bank had bypassed the Finance Minister on this problem (section 4.8)? Instead, he went straight to the Prime Minister.

11. How was it that BBMB never questioned the way loans were given in a roundabout manner to the Carrian Group?
12. Why were some members in the BMF Board allowed to be members of the BBMB Board as well as the Supervisory Committee Board (section 4.8)?
13. How was it that even with the presence of Jalil Ibrahim who was seconded from BBMB to BMF to put things in order, loans were still being released to the Carrian Group?
14. Why did BBMB agreed to the elaborate scheme of using shell companies to release funds for the restructuring of the Carrian Group?
15. What made the Government, the police and the Anti-corruption Agency so complacent in their duties when the case surfaced? Moreover, why was the Government reluctant to let the public know the full story of the scandal?
16. How is it that the case is still pending after more than ten years of its occurrence and that some of the culprits are still roaming around freely?

The above questions will be the main focus of analysis for the next chapter.



### Appendix 3.1

## Differences between the Royal Commission of Inquiry and the Committee of Enquiry

### Royal Commission Of Inquiry

#### Basis Of Existence:

Statutory - under the Commissions of Inquiry Act 1950 (revised 1973).

#### Members Appointed By:

The King upon recommendation of the Prime Minister and Cabinet or a state authority for state matters, save in Sabah and Sarawak.

#### Powers Of Investigations:

1. Summon any person in Malaysia to attend Commission meetings and examine him as a witness. (In case of state authorised commissions, pertains to anyone in that state).
2. Demand disclosure of evidence on oath, affirmation or by statutory declaration.
3. Procure all relevant documents.

#### In Case Of Non-compliance:

1. May issue a warrant of arrest to compel attendance and impose a fine of not more than M\$50 for non-attendance.
2. May impose a fine of not more than M\$50 for refusing to give evidence.

#### Degree Of Openness:

Inquiry proceedings open to public just like court hearings, save that commission empowered to use its discretion to admit or exclude the public and press from either a part of or the entire inquiry.

### Committee Of Enquiry

#### Basis Of Existence:

Administrative measure or under the articles of the company in question.

#### Members Appointed By:

1. Federal or state Governments or individual Government departments, if set up as an administrative measure.
2. The Board of Directors of a company if set up under company's articles of association.

#### Powers Of Investigations:

1. Investigations depend on the goodwill and cooperation of witnesses.
2. No power to call for witnesses.
3. No power to demand disclosure of evidence.
4. No power to obtain documents.

#### In Case Of Non-compliance:

1. No power of subpoena.
2. No power of extracting information if not given willingly.

#### Degree Of Openness:

Investigation conducted quietly away from public scrutiny.

Right To Own Defence:

Person(s) being investigated has right to defend himself and to legal representation.

Protection For Witnesses:

In giving evidence, witnesses protected from subsequent civil or criminal action, unless charged with giving false evidence.

Limitations Of Inquiry:

Need cooperation of foreign Governments to conduct investigations outside Malaysia or to invite foreign nationals to inquiries conducted here.

Costs Met By:

Expenses incurred paid for from Consolidated Funds - i.e. with Government money.

Reporting Of Findings:

Proceedings conducted in public, findings reported through the press. Report of findings submitted to the King and is tabled in its entirety before both Houses of Parliament.

Right To Own Defence:

Right to own defence unknown as each committee determines own procedure.

Protection For Witnesses:

No protection against defamation suits if statements made during enquiry are subsequently published in report of findings.

Limitations Of Inquiry:

Need cooperation of foreign Governments to conduct investigations on all foreign nationals save those employed by committee's authorising body.

Costs Met By:

Expenses incurred paid for by whatever authority setting up committee.

Reporting Of Findings:

Reports submitted to authority setting up the committee. Report need not be made public, either in part or in entirety.

Source: The Star 25/9/1984.

## he authorised lending limits by BBMB to BMFL from 1979 to 1983

(in million US dollars)

200	60	60	410
110	160	250	250
—	50	200	150
30	70	110	100
30	20	—	—
10	—	40	30
—	—	—	10
380	360	660	950

press reports on BMFL's involvement in granting loans to CG, BMFL relied almost entirely on BBMB to provide the required funds.

Over 90% of BMFL's total funds came from inter-work borrowings. In the first full year of operation (1979) BMFL relied on BBMB for only 30% of its inter-bank borrowings. However, this reliance increased to 50% in 1979, and by 1981 it came to 60%. In 1982 the borrowings from BBMB increased to 75% and in 1983 to 85%.

From our review of available records and information provided by officers of BBMB and BMFL we understand that the authorised limits of all overseas branches of BBMB for lending to BMFL are controlled and determined by the Management Committee and the Board of BBMB. Increases in the authorised lending limits during the year are authorised by the Management Committee from time to time at the request of BMFL. The following table

shows the authorised lending limits by the various overseas branches of BBMB to BMFL from 1979 to 1983.

### Assignment

On December 31, 1983, by a Deed of Assignment, BMFL assigned to BBMB outstanding loans totalling HK\$4,968.2 million (M\$1,974.5 million). The assignment included the benefit of all securities held by BMFL.

The effect of the assignment is that BBMB has taken over the loans so assigned including the risks of non-recovery. At the same time the Balance Sheet of BMFL as at December 31, 1983 excludes the loans so assigned, and consequently the advances made by BBMB to BMFL are accordingly reduced.

After the assignment, the loans remaining in the books of BMFL as at December 31, 1983 amounted to HK\$1,133.7 million (M\$449.5 million). A total provision of HK\$488.2 million (M\$144.6 million) has been set aside in the accounts of BMFL from 1980 to 1983 to cover any bad and doubtful loans including the Acceptances outstanding mentioned in paragraph 11 above. This provision is made up as (shown) in TABLE D Subsequent and Final Reports

We are currently interviewing the present and past directors and employees of BMFL and BBMB. We intend to interview all other persons who may be of assistance to us in carrying out our task in accordance with the terms of reference set out in Appendix A.

We are in contact with the relevant authorities in Malaysia and in Hong Kong and will endeavour to obtain access to documents and information as are available and of relevance to our enquiry.

We may at the appropriate time or times report further to BBMB. We will on completion of our enquiry submit our final report.

Signed:  
(Tan Sri Ahmad Noordin Zakaria)  
Chairman  
(Ramli Bial Ibrahim)  
Member  
(Choo Mun Sui)  
Member

Kuala Lumpur  
Dated 17th August,  
1984.

## APPENDIX A

THE terms of reference of the committee are as follows:

To determine and enquire into and report on the affairs of Bumiputra Malaysia Finance Ltd (BMFL) with reference to the following:

(i) the management and control of its operations;

(ii) whether there has been any misuse, misapplication or misappropriation of any of its funds;

(iii) the extent and nature of loans or credit facilities granted by BMFL to: (a) the Carrian Group of Companies and companies associated with Mr George Tan, and (b) Eda Investments Ltd.

(iv) whether such loans and credit facilities were approved in compliance with law and/or lending procedures of the company and were disbursed in accordance with the terms and conditions stipulated by the approving authority; and whether, in all the circumstances, they were made bona fide in the interest of BMFL and consistent with normal prudent banking and

commercial practice;

(v) the person or persons involved in processing and approving such loans or credit facilities;

(vi) whether such person or persons and/or any director, officer or person, directly or indirectly involved with the administration of BMFL, has by himself or by a member of his family or agent received or agreed to receive any benefit in money or money's worth or by whatever name called from: (a) BMFL in addition to his ordinary remuneration; or (b) the borrowers or any of them, and if he has, his identity and the identity or identities of the borrower or borrowers as the case may be;

(vii) any irregularities, frauds or breaches of trust or action in disregard to honest commercial practice or contravention of any law in respect of the administration and operations of BMFL; and

(viii) the measures which in the opinion of the committee are necessary in order to ensure due and proper administration of BMFL in the future.

## APPENDIX B

### LENDING AUTHORITY APPROVED BY BOARD OF BMFL ON JANUARY 11, 1980.

Resolved: The Board revised the limits and powers of the lending authorities of BMFL as follows:

(a) Board of Directors  
All loans or lines of credit in excess of the limits fixed for the Executive Committee must be approved by the Board of Directors.

(b) Executive Committee

(i) Composition — any 2 Directors and the General Manager.

(ii) Quorum — 2.

(iii) Frequency of Meetings — as and when necessary.

(iv) Approved Limits:  
Unsecured HK\$2,000,000;  
Secured HK\$10,000,000;  
LC/TR/BEP/LG/SG HK\$10,000,000.

(c) Management Committee

(i) Composition — General Manager, Asst. General Manager and Chief Dealer.

(ii) Frequency of Meeting — as and when necessary.

(v) Approved Limits:  
Unsecured HK\$500,000;

Secured HK\$3,000,000;  
LC/TR/BEP/LG/SG HK\$3,000,000.

(d) Individual Discretionary Limits

(i) Chairman: Unsecured HK\$500,000; Secured HK\$3,000,000;  
LC/TR/BEP/LG/SG HK\$3,000,000.

(ii) Any Single Member of Board of Directors: Unsecured HK\$250,000; Secured HK\$1,500,000;  
LC/TR/BEP/LG/SG HK\$1,500,000.

(iii) General Manager: Unsecured HK\$100,000; Secured HK\$500,000;  
LC/TR/BEP/LG/SG HK\$500,000.

REVISED BY BOARD OF BMFL ON JANUARY 24, 1981

LENDING AUTHORITY Resolved: The Board revised the limits and powers of the lending authorities by increasing the Approved Limits for Management Committee for LC/TR/BEP/LG/SG from HK\$3,000,000 to HK\$5,000,000.

Note:

LC = Letters of credit  
TR = Trust receipt  
BEP = Bill of exchange payable

LG = Letter of guarantee  
SG = Shipping guarantee

### ORGANISATION CHART OF BMFL FOR THE YEARS 1980, 1981 AND 1982

#### BOARD OF DIRECTORS

L.E. Osman — Chairman

Dato' Hashim Shamsuddin — Director

Dr. Rais Saniman — Alternate

General Manager

Ibrahim Jaafar

Assistant General Manager

Henry Chin Chye Hin

Chief Dealer

Mansoor Saad

### Appendix 3.2

Source: New  
Straits Times,  
3/11/1984.

Appendix 3.3a

Authorised lending limits of various overseas branches of  
BBMB to BMF from 1979 to 1983

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
	US\$	US\$	US\$	US\$	US\$
-Kuala Lumpur	40	200	60	60	410
-London	20	110	160	250	250
-Singapore	-	-	50	200	150
-Bahrain	-	30	70	110	100
-Tokyo	-	30	20	-	-
-New York	-	10	-	40	30
-Los Angeles	-	-	-	-	10
Total	<u>60</u>	<u>380</u>	<u>360</u>	<u>660</u>	<u>950</u>

Source: The Star, 3/11/1984

Appendix 3.3b

BMF's balance sheets at the end of 1979 to 1983

	<u>1979</u> HK\$'000	<u>1980</u> HK\$'000	<u>1981</u> HK\$'000	<u>1982</u> HK\$'000	<u>1983</u> HK\$'000
Loans & advances	796,179	1,685,847	3,738,148	5,510,396	7,666,906
Others	<u>45,611</u>	<u>336,650</u>	<u>177,240</u>	<u>144,210</u>	<u>56,880</u>
Total assets	<u>841,790</u>	<u>2,022,497</u>	<u>3,915,388</u>	<u>5,654,606</u>	<u>7,723,786</u>
Capital & reserve	8,084	13,364	92,892	89,813	82,130
Borrowings from BBMB	437,487	1,137,904	1,905,475	4,096,395	6,946,524
Borrowings from market	376,908	821,982	1,824,197	1,365,794	547,431
Others	<u>19,311</u>	<u>49,247</u>	<u>92,824</u>	<u>102,604</u>	<u>147,701</u>
Total liabilities	<u>841,790</u>	<u>2,022,497</u>	<u>3,915,388</u>	<u>5,654,606</u>	<u>7,723,786</u>

Source: Lim, 1986; 51





**carrian**  
holdings limited  
仕拿集团有限公司

STRICTLY PRIVATE AND CONFIDENTIAL

30 May 1980

The Hon Tengku Tan Sri Razaleigh Hamzah  
MALAYSIA

Delivered BY HAND.

Dear Tengku,

As you are aware we are now completing a number of major developments.

I am confident that over the next 3 - 4 years Carrian Investments Limited will become established as one of Hong Kongs principal trading companies.

As agreed I will arrange for 25m Carrian Investment Limited shares to be made available.

I would like to thank you for your backing for the Carrian Group and I hope to be able to continue to assist you whenever possible.

I would be happy if you would confirm receipt of this letter by signing and returning the attached duplicate.

Yours sincerely,

CARRIAN HOLDINGS LIMITED

GEORGE TAN  
Group Chairman.



(carrian group)

**carrian**  
holdings limited  
仕拿集团有限公司

**CONFIDENTIAL**

PRIVATE AND CONFIDENTIAL

Hon. Tengku Razaleigh  
Minister of Finance  
MALAYSIA.

December 12, 1979.

BY HAND

Dear Tengku,

As discussed I have arranged to purchase 3m Hai Hon shares for HK\$3.00 and will sell for not less than HK\$6.50.

Profit will be remitted as instructed.

I wish to thank you for your support and confidence in the future of the Carrian Group.

Yours sincerely,  
CARRIAN HOLDINGS LIMITED.

George Tan  
CHAIRMAN.





**BUMIPUTRA MALAYSIA FINANCE LIMITED**

(Incorporated in Hong Kong)

18/F., ADMIRALTY CENTRE, TOWER ONE, 18 HARCOURT ROAD, HONG KONG.  
TEL: 5-276267 TELEX: PUTRA HX 85073

July 4, 1983

Ministry of Finance  
Kementerian Kewangan  
Jalan Duta  
Kuala Lumpur.

Attn: Tengku Razaleigh Hamzah  
Minister of Finance

Dear Sir,

Re: Beneficial Owner.

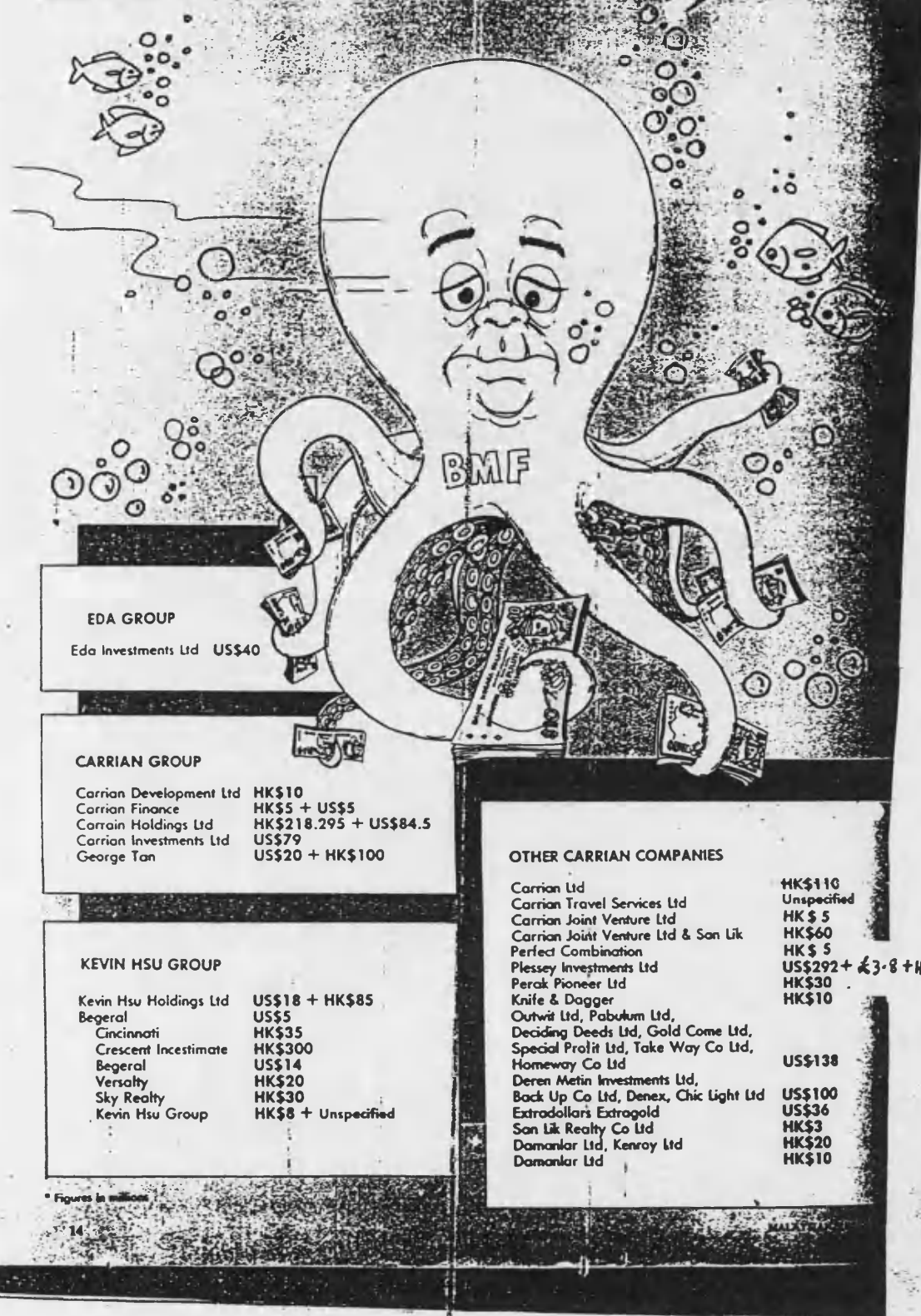
We would be extremely grateful if you could confirm whether or not you are the beneficial owner of 25m Carrian Investment Limited shares.

Yours faithfully,  
for BUMIPUTRA MALAYSIA FINANCE LTD.

JALIL HJ. IBRAHIM  
Asst. General Manager.







## Appendix 3.5a

Source: Malaysian Business, 1/4/1986.

Appendix 3.5b

Term loans (TL) and Money Market loans (MML) to the Carrian Group by BMF from Jun 1979 to March 1981 and from August 1981 to October 1982

<u>Date</u>	<u>Loan type/Amount</u>	<u>Borrower</u>
29/6/79	TL No.1 HK\$5 mil.	Carrian Development Ltd.
4-16/8/79	TL No.2 HK\$50 mil.	Carrian Joint Venture Ltd. & San Lik
24/8/79	TL No.3 HK\$10 mil.	Carrian Joint Venture Ltd. & San Lik
27/9/79	TL No.4 HK\$5 mil.	Carrian Development Ltd.
25/10/79	TL No.5 HK\$5 mil.	Carrian Joint Venture Ltd.
26/10/79	TL No.6 HK\$15 mil.	Carrian Joint Venture Ltd. & San Lik
6/11/79	MML No.1 HK\$5 mil.	Carrian Finance Ltd.
7/11/79	TL No.7 HK\$5 mil.	Perfect Combination
20/11/79	MML No.2 HK\$40 mil.	Carrian Holdings Ltd.
29/11/79	MML No.3 US\$16 mil.	Carrian Holdings Ltd.
2/1/80	MML No.4 US\$5 mil.	Carrian Finance Ltd.
19/12/79- 25/6/80	MML No.5 US\$292 mil.	Plessey Investments Ltd.
9-28/7/80	MML No.6 US\$20 mil.	Carrian Holdings Ltd.
31/7/80	MML No.7 £3.8 mil.	Plessey Investments Ltd.
24-26/2/81	MML No.8 HK\$60 mil.	Plessey Investments Ltd.
19/3/81	MML No.9 HK\$8 mil.	Plessey Investments Ltd.

<u>Date</u>	<u>Loan type/Amount</u>	<u>Borrower</u>
24-25/3/81	MML No.10 HK\$10 mil.	Carrian Holdings Ltd.
27/8/81	MML No.11 HK\$50 mil.	Carrian Holdings Ltd.
23/9/81, 22/10/81, 1/12/81	TL No.8 US\$138 mil.	Outwit Ltd., Pabulum Ltd., Deciding Deeds Ltd., Gold Come Ltd., Special Profit Ltd., Take Way Co. Ltd., Home Way Co. Ltd.
6-19/11/81	MML No.12 US\$37 mil. HK\$24.295 mil.	Carrian Holdings Ltd.
1/12/81- 4/1/82	MML No.13 US\$100 mil.	Denax, Deren Metin Investment Ltd., Back Up Co. Ltd., Chic Light Ltd.
24/12/81	MML No.14 HK\$230 mil.	Carrian Holdings Ltd.
30/12/81	TL No.9 US\$36 mil.	Extradollars, Extragold
4/1/82	MML No.15 US\$20 mil.	George Tan
20/1/82	MML No.16 HK\$48 mil.	Carrian Holdings Ltd.
20/1/82, 5/2/82, 17/2/82	MML No.17 US\$79 mil.	Carrian Investments Ltd.
5/2/82	MML No.18 HK\$100 mil.	George Tan
12/3/82	MML No.20 HK\$30 mil.	Perak Pioneer Ltd.
12/3/82	MML No.21 HK\$10 mil.	Knife & Dagger
15/3/82, 2/4/82, 20/4/82	MML No.22 HK\$110 mil.	Carrian Ltd.
7/4/82	TL No.10 HK\$3 mil.	San Lik Realty Co. Ltd.
28/5/82	MML No.23 HK\$20 mil.	Damanlar Ltd., Kenroy Ltd.

<u>Date</u>	<u>Loan type/Amount</u>	<u>Borrower</u>
30/6/82	MML No.24 HK\$10 mil.	Damanlar Ltd.
16/7/82	MML No.25 HK\$38 mil.	Carrian Travel Services Ltd.
18/8/82- 12/10/82	MML No.26 US\$37.5 mil.	Carrian Holdings Ltd.

Total Term loans and Money Market loans from 29/6/79 to 8/8/85:

US\$841.5 mil.  
HK\$857.295 mil.  
£3.8 mil.

Source: Translated from the BMF White Paper 1986.

Appendix 3.5c

The percentage of the Carrian Group loans and advances to BMF's and BBMB's share capital and reserves at the end of 1979 to 1983

As at 31st December (in million)

		<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
BMF's share capital and reserves	-HK\$	8.1	13.4	92.9	89.8	82.1
	-M\$	3.7	5.8	36.7	32.1	24.1
BBMB's share capital and reserves	-M\$	158.9	356.2	580.8	620.9	1247.3
Total loans & advances to Carrian Group	-HK\$	258.9	1,063.9	2,198.8	3,939.8	5,828.1
	-M\$	118.4	459.4	868.4	1,407.1	1,750.2
Carrian Group loans & advances to BMF's share capital & reserves	%	3,203	7,939	2,367	4,387	7,098
Carrian Group loans & advances to BBMB's share capital & reserves	%	75	129	150	227	140

Source: Lim, 1986; 50

**MESSEY INVESTMENTS LIMITED**

電話：五-二四〇〇-三 五-二六六二七七  
 LAM CHANFORD HOUSE, 64-70A QUEEN'S ROAD, C. HONG KONG TEL 6-240013 6-266277

**STRICTLY PRIVATE & CONFIDENTIAL**

**December 17, 1979**

1. **Malay Putra Malaysia Finance Ltd.**  
 2408 American International Tower  
 Queen's Road  
 Hong Kong

Attn: Mr. Ibrahim Jaafar

Wer stirbt

Wai Lap Heng Building, Gloucester Road

With reference to the subsequent meetings during the visit of the Minister of Finance of Malaysia, we, as requested, are willing to act as an agent for the Malaysia Government to purchase the captioned property under the name of captioned Company, Plessey Investment Limited.

In order to prevent the loss of the opportunity to purchase the above property, please immediately transfer US\$10 Million as deposit to our account stated belows.

**PLESSEY INVESTMENTS LTD.**  
**Wing Lung Bank Ltd.**  
**Head Office**  
**Account Number 002-1648-5**

Yours faithfully,  
PLESSEY INVESTMENTS LTD.

  
Director

### Chartered Surveyors

International Real Estate Consultants

23 100 11 15  
 100 100 100 100 100  
 100 100 100 100 100  
 100 100 100 100 100  
 100 100 100 100 100

[illegible]

Finance and Administration  
\* J. Smith B.Sc. F.C.A. - Partnership Accountant  
Gordon E. Cox F.C.I.S. F.B.I.W. - Partnership Secretary

Information Services Department  
P.O. Box 3000, Econ. & L.A.

**Bancroft House  
Paternoster Square  
London EC4P 4ET  
01-236 1520 and 5020  
Telex 883749**

44 Brook Street London W1Y 1YB  
01 458 1161  
3 Castle Street Cardiff CF1 2RU  
0222 398182

In association with R. M. & R. W. Clutton  
Chartered Surveyors  
Land Agents & Valuers  
East Grinstead   Norfolk   Matvern

OX 180 City &amp; London

Our reference **GOG/IE**

Your references

4 May 1983

You have requested our advice in relation to the recent valuations you have received of the various interests in the properties owned by Carrian Holdings Ltd. and its subsidiaries and charged to the Bank as security for its loans to that Company.

The address of the properties and our understanding of the Company's interest in them are set out in the attached schedule and our subsequent figures reflect only the borrowers' interest in the portfolio.

We have inspected all the properties with the exception of that in Singapore, numbered 18 in the schedule, which has been inspected by our associate office in Singapore. We have obtained and assumed as correct such information as was available within the Bank or made available to us by the Company.

The time in which you have requested our advice has not permitted us to carry out a full survey and assemble all the facts which we would require in order to provide a current market valuation of the various interests. However, on the basis of the data provided and our inspections, we have been able to form a view on the valuation reports you have received and a view of the portfolio in the market conditions now existing, if the Company were required to realise these assets at the present time.

.../2

New York Bahrain Brussels Hamburg  
Associated offices:  
Sydney Adelaide Brisbane Perth Kuala Lumpur Penang Temerloh Hong Kong

As in western economies, the markets for property interests in Hong Kong and Singapore have in the recent past been adversely affected by the current world economic depression. In Hong Kong the political uncertainty surrounding its future has been an additional depressing factor. The USA has shared with other western economies the effect of world economic depression on property market activity. In such conditions it is, usually in the short term, the values of interests in land suitable for development or redevelopment that are subject to the greatest fluctuations.

It is lending secured against such interests which is the most vulnerable and the current position in Hong Kong and, to a lesser extent, in the USA and Singapore is similar to that experienced by the banking community in the UK in 1974/75.

Whilst part of the Carrian portfolio comprises sites required for development, a substantial part is completed investments or existing buildings and, whilst affected by current market conditions, are more likely to weather the storm by reason of their being income producing.

We have seen the report dated 16 April 1983 of Mr. Garland but do not share the optimism reflected in his Total Preliminary Valuation of HK\$4.626 million. Whilst it is not easy accurately to determine open market values in present conditions, we believe that, if the Company were now required to realise their assets, the portfolio would not produce sums reflecting Mr. Garland's figure.

We understand, however, that the Bank are considering the more practical approach of a moratorium with the Carrian Group in relation to the Company's debts to the Bank, including possibly the temporary waiving of interest charges due on current loans.

In current property market conditions, we share the Bank's view that there may be need for a moratorium and that it would not be financially sensible to seek liquidation of the Company's portfolio now. Any moratorium agreement should assure that there is responsible management of the properties, the accurate monitoring of all income and the strict control of expenditure. The judicious funding of some development would be likely to improve the security of loans and other debts, but, before being undertaken, needs most careful analysis.

If the moratorium were to be for a period of 3 to 5 years and given the existing prospects of steady economic recovery, we would expect the value of the property portfolio to rise.

.../3



The completed developments in Hong Kong and the USA, given as security against the Bank's loans, will provide in the immediate future an annual net income in the region of HK\$66 million (HK\$40 million in Hong Kong, HK\$26 million in the USA). If current interest on the Bank's loan is to be waived during the moratorium, then this annual income (subject to tax, if any) could provide a figure of up to HK\$300 million to reduce the overall loan and help to restore the security of loans against property values by the end of the moratorium period.

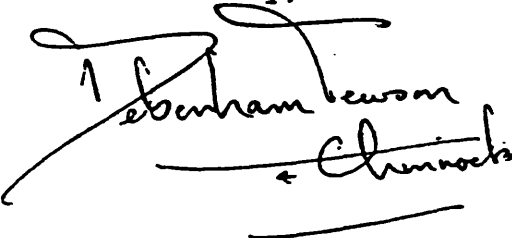
We have not however taken account of the liabilities inherent in the ownership of the leasehold interest in the properties held for development in Hong Kong. Such liabilities may have to be met during the moratorium period. These include the cost of acquiring, where necessary, improved development rights from the Crown, the cost of meeting development obligations under the existing Crown leases, and the balance of the purchase price for the Miramar Hotel project.

During a moratorium period of 3 to 5 years we would expect the value of these assets to rise to a figure in the region of HK\$3,465 million. (~~HK\$1,735 million in Hong Kong, US\$262.5 million in USA and S\$9 million in Singapore~~). The Hong Kong total assumes no appreciation in the modest figures we have currently put on the interests in sites for development in Hong Kong.

The present conversion rate adopted for US\$1 is HK\$6-5. Any further strengthening of the US dollar against the Hong Kong dollar would improve the security of US property values against the Hong Kong dollar loans.

Given a gradual recovery from the current economic depression and satisfactory management and control, the Bank may reasonably expect, in our opinion, to recover, or satisfactorily secure, most of its current lending.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Debenham Tewson & Chinnocks', with a large, sweeping flourish extending from the top left.

For attn. Muhamad Radzi, Esq.,  
Bank Bumiputra Malaysia Berhad,  
Menara Bumiputra,  
PO Box 407,  
Jalan Melaka,  
Kuala Lumpur,  
MALAYSIA.

## Jalil's Unfinished Letter

**I** ... Honestly I have reached the limit of my patience here. If I don't have the contract on the back of my mind, I would give notice of resignation and find a less worrisome, less problematic job. It seems to me that the reward for being a good worker is to load him with more and more problems until he goes mad. The problems in Hong Kong are not my making and from today onwards, I am going to think of myself and my family first, and put the interests of the Bank, the race and the country behind me. If those directors had thought of the interests of the bank, race and country first, they wouldn't have made all those blunders in the first place. I have sacrificed enough and if I am asked to make further sacrifices, become another mad man by going to the USA, then I will not hesitate to give them a piece of my mind. They can recall me to KL on 24 hour notice - that's fine with me. Basically they must know I have had enough and I mean it. **J**

- June 1983

## **Chapter 4**

### **Analysis Of The BMF Case**

#### **Introduction**

This chapter will analyze the BMF case which was described in chapter 3. The first section will analyze the case at the micro level i.e. the organizational structure, policies and culture of the bank. As the case is very complicated and involved many factors, it will be dealt with as systematically as possible. The second part of the chapter will analyze the BMF case at the macro level i.e. relating the case to the Malaysian social and political environment. I would like to point out that the analysis given below is based on all the information I managed to gather. In an ideal world where accurate information could easily be gathered, I would be able to give a confident definition and analysis of any event. However, we are living in a world of "half-truth" where sensitive information is usually suppressed, I would try my best to verify my facts and give as accurate an analysis as possible<sup>1</sup>.

#### **1. Problems of the BMF case at the micro level**

##### **1.1. The loan transactions between BMF and the Carrian Group**

The description of the BMF case in chapter 3 showed that the way the loans were given out to the Carrian Group was not in accordance with prudent banking practices. This

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<sup>1</sup>The opinions given in this chapter should not be taken as anti-Malaysian Government, but as constructive and well-meaning criticisms to be given some considerations in order to make Malaysia a even better and well respected place for her citizens.

view was supported by Clive Nicholls, counsel opening the Hong Kong Government's case in London on 27 May 1986 for the extradition of Lorrain Osman and Hashim Shamsuddin (the Directors of BMF) from Britain, who pointed out that the manner in which they were released broke the rules set out in a banking manual to which Hashim himself had written the preface. For a start, the identity and creditworthiness of George Tan and the Carrion Group were not investigated thoroughly before the loans were approved by the Board of Directors, especially when the loans were unusually large. If BMF had done so, it would have found out that George Tan was a bankrupt when he first approached the bank for loans. There were also instances where the loans were approved before the applications were received from the Carrion Group or else the loans were given out before approval was given. At other times, loans were given out when interest payments on existing loans were not repaid at the dateline. There was also inadequate evaluation of the feasibility of the projects proposed by the Carrion Group. Likewise, collateral negotiated for the loans were not assessed and secured properly. In some loans, the collateral was just a guarantee from George Tan instead of from a third party, post-dated cheques which were given by George Tan or the Carrion Group which could be reissued when expired or quoted and unquoted shares which would be valueless if the company went into liquidation. When the loans were released, they were not properly recorded or documented, for example, who the borrower was, what was the purpose of the loans, the type of loans approved, etc.. The records of BMF and those of the

Carrian Group could differ concerning the loans. Was this poor performance by the staff members of BMF due to their incompetence? The Committee of Enquiry had pointed out that the management of BMF was capable of managing other loans in a proper manner and in accordance with sound banking practices. Thus, it was not that the staff members of BMF were incompetent. Where the Carrian loans were concerned, all rules and guidelines seemed to be dispensed with and the General Manager and Directors appeared to use considerable personal discretion. According to the statement of facts agreed by the prosecution and Hashim during Hashim's trial in Hong Kong, all but one of a series of loans made by the management of BMF to Carrian were fraudulent. The exception was the very first loan of HK\$50 mil. made in late 1979, shortly before Carrian made a bid for the property company, Mai Hon (FEER, 29/1/1987). The Carrian Group certainly enjoyed a very special relationship with the management of BMF that went well beyond the normal business-client relationship.

Could the management of BMF have been actually doing business with the Carrian Group in the beginning? The problems mentioned above could be overlooked because the management of BMF was too eager to take advantage of the property boom in Hong Kong to make a huge profit. After all, big established banks like the Hong Kong and Shanghai Bank, Barclays Bank of Britain, the Bank of Communications of China, Westdeutsche Landesbank of Germany and Paribas of France were also involved in giving loans to the Carrian Group during that period. The management of these banks,

too, failed to assess Carrian's financial soundness and future prospects. Instead, they relied heavily on the prestigious assessment made by Vickers Da Costa, one of London's best known brokers with long established offices in Tokyo, Hong Kong and Singapore. The assessment showed that Carrian was in sound financial health and its potential growth was good. The Vickers report was substantiated by local reports (Gill, 1985; 48). The speculation of local media on the 'favourable' developments of the Carrian Group might have also influenced the management of the banks in their decisions and thus escalated things for Carrian. Many investors and banks certainly did not foresee that when Britain and China began negotiation in September 1982 for the return of Hong Kong in 1997, the Hong Kong stock market would plunge, causing property prices and the Hong Kong dollar to fall drastically. They became victims of the collapse of the Hong Kong property market like the Carrian Group. A few Hong Kong banks needed an emergency injection of capital from bigger established banks to survive. Did the management of BMF give loans to the Carrian Group, even when it was already facing liquidity problems, because it was hoping that if it could hang on long enough, the property prices would recover to enable Carrian to sell its assets to meet its obligations? Perhaps it might have worked if not for the murder of Jalil Ibrahim, the Assistant General Manager of BMF, which brought the scandal to the surface. Even so, the management of BMF should have realised that it was using "good money to chase bad money" and that it was taking a very big risk in giving the majority of its loans

to one customer. In view of this fact, did the management of BMF make an imprudent judgement in its eagerness to make profits like the other established banks or were it out to defraud the bank? According to Kevin Cahill, a former financial systems supervisor of Gulf Oil in Britain from 1976 to 1978, who is now a journalist and who campaigned to free Lorrain Osman from his imprisonment on remand for seven years, it was not unusual for the management of BMF to lend such large sums of money to the Carrion Group to make a profit, especially by Hong Kong standards. However, the way the loans were recorded and released was open to suspicion. The general belief was that the General Manager and Directors of BMF as well as some powerful political figures were defrauding the bank. Also, more loans were given out when the Carrion Group was facing liquidity problems to help push through the Carrion restructuring proposal so that the scandal could be covered up. The justification was that the money would have gone to pay off other creditors of Carrion and the money was only 8% of existing Carrion exposure and considered 'cheap' for keeping the situation at Carrion and BMF from coming fully into public view (FEER, 17/11/1983).

My own belief was that of the latter explanation i.e. the General Manager and Directors of BMF together with a few prominent politicians were out to defraud the bank and they had every opportunity to do so given their positions. I would like to discuss in detail why I came to that conclusion. There were a few significant factors that would justify my suspicions.

**1.1.1. Dealings of the management of BMF with the Carrian Group**

Below is a list of queries about the dealings of the management of BMF with the Carrian Group:

1. After a few dealings with the Carrian Group, the management of BMF must have realised that the Carrian Empire was built on shady deals. From the report of the Committee of Enquiry, the Carrian image seemed to thrive on its schemes of buying and selling of assets between its different subsidiaries at fictitiously high profits. These schemes also helped to inflate its share prices;
2. The Carrian Group used, on most occasions, shell companies with paid up capital of HK\$2 to receive funds from BMF. These shell companies tried to camouflage the identity of the original borrower i.e. the Carrian Group, for example Plessey Investments Limited (see section 4.1.1, chap.3) for the implementation of the "Concerted Plan" and the seven HK\$2 'shell' companies for the purchase of Grand Marine Holdings which was to be resold to the Malaysian Government at a profit of HK\$200 mil. (see sec.4.3.1, chap.3). Moreover, the loans were usually released in a roundabout manner to many destinations before they reached the intended place (see sec.4.6, chap.3). The management of BMF must have known of these practices when they were given instructions to deposit the money. After all, the management committees of BMF and BBMB resorted to the same tactic i.e. using offshore nominee companies to



hide their identity when they decided to buy the United States assets from Carrian when they could not obtain them as securities for the Carrian loans (see section 4.10.3 & 4.10.4, chap.3);

3. In some of the transactions, the management of BMF was actually helping the Carrian Group to hide its identity as the borrower. Likewise, Carrian also concealed the fact that a big portion of its loans were from BMF. There was much secrecy and discrepancy in the dealings between the management of BMF and the Carrian Group. For example, at the time of the initial releases of the loan of US\$292 mil. (see sec. 4.1.1, chap.3), the management of BMF held no securities from Carrian. It was not until after a large portion of the US\$292 mil. had been released that mortgages were executed for the two Hong Kong properties i.e. Gammon House and the Metropolitan Bank Building. Maximum Entry Limited was then 'activated' for the sole purpose of taking a mortgage over Gammon House from Extrawin and be shown as the provider of the funds for the purchase of Gammon House "allegedly in order to conceal the fact that BMF was the real lender". The mortgage for the Metropolitan Bank Building was also deliberately never registered in the Companies Registry or the Land Registry and was void against a liquidator in the event of a winding up and was therefore not good security" (FEER, 12/6/1986). Gammon House was bought with the intention of selling it to the Malaysian Government for US\$250 mil. i.e. at a profit of US\$50 mil.. It was bought at the price of

approximately US\$200 mil.. However, the management of BMF collaborated with the Carrian Group to deceive the Malaysian Government that it was bought at the price of US\$250 mil. (see sec.4.1.1, chap.3).

**1.1.2. Collaboration of the management of BMF to cover-up the accounts of the Carrian Group**

The management of BMF also went to the extent of "window dressing" its accounts to show a reduction of the outstanding loans to the Carrian Group by purchasing two floors of the Metropolitan Bank Building at a phenomenal price of HK\$200 mil. while the entire building of seventeen floors was only bought at the price of HK\$268 mil.. These two floors were then sold back to Carrian at HK\$200 mil. which was financed by BMF. The security was a first legal mortgage of the two floors of Metropolitan Bank Building. However, another creditor of Carrian, West LB Asia Limited also claimed these two floors as security for a loan of HK\$100 mil. to Carrian (see sec.4.1.2, chap.3). Most of the seventeen floors of Carrian were bought back by its subsidiaries or Carrian related companies and each sale was financed by BMF. The impression one received at this point was that the management of BMF was using all means and ways to release money to the Carrian Group.

Besides, "window dressing" the accounts, the management of BMF also collaborated with the Carrian Group to show a reduction of loans by 'reallocating' the total loans (see sec.4.3.1, chap.3). Up to this point, one could not help having the impression that Carrian was more than just a

client of BMF and BBMB.

In another instance, Ibrahim, the General Manager of BMF, cooperated with the Carrian Group to deceive the auditors of BMF in the half yearly closing audit of BMF (see sec.4.7, chap.3). The management of CHL was asked to issue five post-dated cheques as securities for the audit which would be cancelled once the audit was completed.

When the utilisation of the loans from BMF was traced, part of the money was used to invest in gold coins, to repay back interest on outstanding loans to BMF, to repay back loans of other subsidiaries, investments in shares, paintings, Rolls Royce cars, decorations of personal residences, donations as well as remittances into the accounts of the Directors of BMF. For example, HK\$8 mil. was remitted into the account of the solicitors of Lorrain Osman (see sec.4.1.1, chap.3).

#### **1.1.3. The insincerity of the implementation of the October 4th Agreements and the January 26th Agreements**

Was the management of BMF serious in trying to implement the October 4th Agreements and the January 26th Agreements when it tried to secure adequate securities for its existing loans to the Carrian Group (see sec.4.9, chap.3)? In the beginning of these Agreements, it would seem that George Tan was trying to trick the management of BMF into giving up its existing securities for the United States assets. However, in the events that followed, BMF seemed willing to part with the existing securities and not

genuinely wanting to put its securities position over the loans to Carrian in order. Fraud seemed to be suggested because:

1. It did not evaluate properly the United States assets before agreeing to the exchange. It accepted George Tan's words that these United States assets were valued at US\$560 mil., but in actual fact, they were worth only US\$76 mil.;
2. Before obtaining the United States assets, the management of BMF was already releasing the existing securities it held at the request of Carrian;
3. It did not check that the United States assets had already been mortgaged and that Carrian owned less than 50% of the Orlando property which meant that permission of Carrian's partners would be needed;
4. While trying to secure its securities position, the management of BMF was still lending out large sums of money to the Carrian Group even when it had announced that it was facing liquidity problems;
5. One of the loans was released to Paris Ride, a company incorporated by Deacons, solicitors of CHL, to keep BMF's involvement in keeping Carrian afloat a secret from the financial advisers of Carrian and the other creditors. Its records and files would not be made available to the liquidators since the company is under Deacons;
6. The management of BMF would participate in the

restructuring scheme by providing US\$40 mil. for the revolving credit facility. However, it did not want its identity revealed and thus the money was released in a roundabout manner;

7. The management of BMF would under-declare the amount of loans the Carrion Group had borrowed from it to Carrion's creditors and financial advisers. It would only declare US\$35 mil. and omitting the other US\$500 mil.;
8. The management of BMF eventually decided to buy the United States assets instead of trying to secure them as securities from the Carrion Group at the price of US\$76 mil. although it was valued at less;
9. The management of BMF also decided to purchase shares of China Underwriters Life & General Insurance Company Limited although the value at that time was nil.

All the nine factors above gave the impression that the management of BMF was actually trying to release money in whatever ways possible to the Carrion Group to keep it afloat, including taking up deals which it knew, in advance, would incur substantial loss. The plausible reason was that the management of BMF did not want the truth that it had 'lost' a lot of money to the Carrion Group or perhaps even defrauded the money with the collaboration of Carrion. Once Carrion collapsed, the truth would inevitably surface. Carrion, on the other hand, kept to its bargain by

concealing BMF's involvement. The management of BMF should also have realised that in doing all it could to keep Carrian afloat, it had broken a few rules i.e. defrauding shareholders and creditors of CIL and CHL and misleading the financial advisers of CIL and CHL.

**1.1.4. Actions or no action taken by the management of BMF against the Carrian Group**

During the trials of George Tan, he had alleged that BMF and BBMB were the major shareholders of some of the Carrian companies, for example PIL. The management committees of BMF and BBMB had never denied these allegations. George Tan also alleged that one of the loans of US\$40 mil. was actually a secret investment of BMF in CIL. The management of BMF never answered the allegations. Instead, it withdrew the summons for Final Judgement against George Tan.

The management of BMF did not take any positive action against the Carrian Group immediately after its collapse. One of the actions taken to recover its loans after the collapse of the Carrian empire was filing seven writs against George Tan as guarantor for the seven loans to the seven shell companies used to purchase Grand Marine Holdings. The writs were served, but were retracted on the decision of the management of BBMB. The writs were then allowed to lapse. This action was very unbecoming of a government-owned financial institution.

It was pointed out by Lim Kit Siang, the leader of the opposition party, Democratic Action Party, that the

Institute for Social Analysis found out that when Bently Ho, George Tan's right hand man and Executive Director of Carrian, was arrested on the same day as George Tan in Hong Kong, he was trying to board a flight to Malaysia (Lim, 1983; 21). Why did he want to go to Malaysia? Was it because he knew that the Malaysian Government would protect him from any legal proceedings?

I have dealt with the transactions between BMF and the Carrian Group and pointed out that the management committee of BMF was certainly guilty of fraud and corruption. However, this case could not have been prolonged for a few years without the help of other agencies, the closest being the parent bank, BBMB. In the next section, I shall analyze the roles of the controlling agencies of BMF.

## **1.2. The roles of the controlling agencies of BMF**

### **1.2.1. The parent bank, BBMB**

The parent bank of BMF, BBMB, had denied initially that it knew of the illegal transactions between its subsidiary, BMF, and the Carrian Group. The problem, I believe, was not that the management of the parent bank did not know of these transactions. It was just not firm enough with BMF. The management of BBMB could not possibly have not known of these transactions as the management of BMF was required to submit regular reports to the BBMB head office in Kuala Lumpur. The BMF's 1982 annual report showed that its outstanding loans at the end of 1982 soared 145% from HK\$2,032 mil. at the end of 1981 to HK\$4,972 mil. at the end of 1982 and that the new lending was funded entirely by BBMB

which pumped HK\$2,282 mil. into BMF in 1982 (Lim, 1986; 267). The management of BBMB claimed that the Monthly Returns were only sent to Rais, the Senior General Manager of the International Banking Division of BBMB who was also the alternate Director of BMF, and to Lorrain Osman and Hashim, Directors of BMF until mid 1982. Thus, the other Board members of BBMB, who were not involved with the management of BMF, would not have known about these illegal transactions until July 1982 when a set of the Monthly Returns was then sent to the General Manager of the Funds Management Department. But, the Global Placement Limits, which were lending limits to customers that were placed on overseas branches of BBMB, were decided by the managing committee of BBMB and then approved by the Executive Committee and the Board of Directors of BBMB. It was true that in 1981, the management of BMF revised the lending authority of its Board members without getting the approval of the management of BBMB in 1982. However, the management of BBMB should have noted the drastic increase in its lending from 1981 to 1982. Moreover, the management of BBMB must also have known about the huge increase of BMF's Inter-Branch Placement Limit i.e. the limits that an overseas BBMB branch or Kuala Lumpur could lend to BMF, from US\$60 mil. in 1979 to US\$380 mil. in 1981, US\$660 mil. in 1982 and US\$950 mil. in 1983. These limits were determined every year by the managing committee of BBMB although there was no specification as to which committee should do the job. The management of BBMB did not question the increase in limits requested by the management of BMF before it gave the



approval. If that was not enough proof that the management of BBMB knew about the BMF scandal much earlier than it claimed, its auditors advice at that time would be another factor (see sec.4.2, chap.3).

#### **1.2.2. The auditors of BMF**

Touche Ross, the auditors of BMF became aware of the problem as early as June 1980 and warned the management of BMF about the overconcentration of loans to the Carrian Group and the inadequacy of securities. However, it was told all the loans were given out on a secured basis with full Board approval and that they were "a management matter and not really an audit matter" (see sec. 4.2, chap.3). Due to the 'sensitiveness' of the issue, Touche Ross refrained from commenting, but alerted Hanafiah Raslan & Mohammad, auditors of BBMB. Hanafiah Raslan & Mohammad informed the then Chairman of BBMB, Kamarul, of BMF's problems and that there was also a possible case of corruption with the General Manager of BMF, Ibrahim (see sec.4.2, chap.3). The management of BBMB was alerted again by its auditors in 1982, when Touche Ross was unable to give audit clearance to the BMF account because there were problems with the adequacy of securities and lack of loan documentations. However, the audit was cleared when Rais, the alternate Director of BMF, signed a temporary letter of guarantee that BBMB would assume all liabilities, obligations and commitments of BMF. The management of BBMB knew all along the troubles in BMF. Why was it not firm with BMF?

Were Touche Ross and Hanafiah Raslan & Mohammad, the

auditors of BMF and BBMB respectively, wrong in giving audit clearance to the accounts of BMF although they knew of the problems involved and had notified BMF and BBMB? The fact that Touche Ross informed Hanafiah Raslan & Mohammad of BMF's problems indirectly passed the responsibilities of the accounts of BMF to the auditors of the parent bank. The letter of guarantee from Rais should have given some legal protection to both the auditors from being sued by other institutions relying on the reports. However, the letter of guarantee given by Rais on behalf of BBMB was not formally ratified by the main Board of BBMB. This letter of guarantee was also not disclosed in the accounts of BMF by Touche Ross. Thus, according to the Committee of Enquiry, the audited financial accounts of BMF as well as BBMB did not give a "true and fair view of the state of affairs of BBMB and the Group as at 31 December 1981" (Lim, 1986; 36). The auditors were liable for the losses incurred by their clients because of negligent or fraudulent auditing. Moreover, section 174 of the Companies Act requires every auditor to state whether, in his opinion, the balance sheet and the profit and loss account give a "true and fair view of the company's affair" and also whether the Directors' Report had complied with the requirements of the Act (Lim, 1986; 279). The auditing guideline set out by the Institute of Chartered Accountants in England did stress that auditors were not responsible for preventing fraud, other irregularities or errors. The responsibility was on the management. However, if the auditor suspected a fraud was committed, he should inform senior management of his

suspensions. If he suspected that management might be involved in, or was condoning, fraud or other irregularities, he should report promptly to senior management (provided the managers to whom he would report were not suspected of being involved). Legal advice might be required if the auditor believed that senior management, including members of the Board of Directors, was involved, or if he believed that his report might not be acted upon, or if he was unsure as to the person to whom he should report. There might also be exceptional occasions when it was necessary for the auditor to report direct to a third party without the knowledge or consent of management (The Institute of Chartered Accountants, 1992; 573-574). The fact that the auditors seemed to try to avoid or passed on the responsibilities whenever they could showed that they knew of the fraudulent acts that were going on in BMF. They tried to avoid the issue by getting a letter of guarantee from the bank. Should auditors be absolved from responsibilities with the letter of guarantee even though they knew of the illegal transactions that were going on in the bank? The auditors were clearly going against their audit guidelines. Although confidentiality was an implied term of an auditor's contract, it was not absolute. Auditors were not bound by their duty of confidence and could disclose matters to the proper authority in the public interest (Institute of Chartered Accountants, 1992; 575). If they were unsure of their actions, they could have sought out legal advice. The auditors of BMF and BBMB did not take any of the actions which they were supposed to do according to the Companies

Act and the auditing guidelines.

### **1.2.3. The solicitors of BMF**

What about the role of solicitors? BMF's solicitors, Peter Mark & Company, had also repeatedly advised the management of BMF that the outstanding loans were under-secured and the securities were of doubtful values. But, it did not do anything more than that. Should lawyers be able to use the excuse of the confidentiality of the lawyer-client relationship to protect corrupt deals that went on in BMF? After all, they were paid to look after the business and welfare of their clients and the corrupt deals might be very profitable to them. According to "The Professional Conduct of Solicitors" issued by The Council of The Law Society, communications between solicitors and clients were not privileged where they were made the conscious or unconscious instrument of the criminal or fraudulent purpose of the client. However, it was not sufficient that there should be an allegation of crime or fraud. There must be prima facie evidence of crime or fraud. Moreover, if a solicitor found out that his or her client was about to perpetrate a fraud, there might be circumstances where it would be improper for him or her to keep silent, for example, where the client threatened to commit a serious crime which the solicitor thought he intended to commit (The Council of the Law Society, 1974; 51). Did this include defrauding the public's money? It was also stated that, "Any conduct by a solicitor whether or not in his professional capacity towards members of the public which is fraudulent

or contains any element of fraud or by which the solicitor uses his position as such to take an unfair advantage either for himself or another person over another party, especially where that other party is not independently represented, constitutes unbefitting conduct" (The Council of the Law Society, 1974; 77). The Professional Conduct of Solicitors clearly stated that solicitors should not implicate themselves directly or indirectly in any corrupt deals. Moreover, it was not professional and if they held back information which they knew was a cover-up of some corrupt deals, then they themselves would be the suspects. However, the guidelines for solicitors did not mention that it was a crime or against the professional conduct for solicitors not to reveal any fraudulent acts so long as they themselves were not involved. The guidelines merely stated that the actions might be 'improper' or 'unbefitting'.

In the BMF case, Peter Mark & Company seemed to have done their duties by advising BMF management that the loans were under-secured and the securities were of doubtful value. My opinion is that such a practice is not enough. It will allow fraud cases to go undetected. The Law Society, perhaps, should discipline solicitors who knew of the fraudulent acts, but did not inform the relevant authority. This would make more solicitors "whistle-blow" on any fraudulent act by their clients.

#### **1.2.4. Bank Negara, the central bank**

When the management of Bank Negara, the central bank, came to know of the problems of BMF in September 1982 when

its accounts showed that the capital position and the securities for loans to the Carrian Group were not satisfactory, it did not carry out its duty to eliminate or control the problems. In fact, the Governor of Bank Negara gave the impression that he was prevented from carrying out his duties. Section 33 of the Banking Act 1973 empowered the management of Bank Negara "from time to time to investigate under conditions of secrecy, the books, accounts and transactions of each licensed bank and of any branch, agency or office outside the Federation opened by a licensed bank incorporated in the Federation". If any bank was unable to meet obligations or conducting business to the detriment of depositors, the management of Bank Negara was able to carry out the following under section 39 of the Banking Act 1973:

- a. prohibit the bank from extending any further advance, loan or credit facility for such period or periods as may be specified and subject to such exceptions if any and other conditions as the central bank may impose;
- b. remove from office any of its directors or appoint any person as its director;
- c. appoint a person to advise the bank in the proper conduct of its business;
- d. assume control of and carry on, the business of the bank or appoint some other person to assume control of and carry on, the business of the bank.

The management of Bank Negara did nothing that was in its power for the BMF case. If the management of Bank Negara

had carried out its duties i.e. taking vigorous actions to straighten out the bank, at least some money that went missing could have been salvaged. As the leader of the Committee of Enquiry, Ahmad Noordin, pointed out on 8 December 1985, "about M\$150 mil." could have been saved had officers responsible for BMF lending been replaced (FEER, 19/12/1985).

Instead the Governor of Bank Negara alerted the Chairman of BBMB that the central bank realised the problems and that he should improve the situation. The Governor also wrote to the Prime Minister, Mahathir Mohamad, to brief him on the problems of BMF. In one letter, he asked the Prime Minister for an appointment to discuss how the annual accounts of the Bank Bumiputra Group should be presented (see sec.4.8, chap.3). Within the few months that the Governor was briefing the Prime Minister, more loans were given out by BMF to Carrian. Why was the Governor 'afraid' of taking actions when he had the duty to do so? Was he prevented by some higher authority from carrying out his duties? Why did he brief the Prime Minister instead of his immediate boss i.e. the Minister of Finance, Tengku Razaleigh, especially after the Prime Minister said that BBMB and BMF were under the control and charge of the Finance Minister in October 1983 (Lim, 1986; 28)? Why was Tengku Razaleigh bypassed? Was it because he was involved in the fraud as implicated in the report of the Committee of Enquiry? Why was the Prime Minister accepted by the Governor as the only person who should be consulted and hence, would be able to handle the situation?

From the report of the Committee of Enquiry, newspapers and journal articles and the interviews I have carried out, there was a strong indication that Tengku Razaleigh was involved in the BMF scandal. It could be for this reason that the Governor had bypassed him. Moreover, Tengku Razaleigh was not only the Finance Minister, he was also a member of the Kelantan royal family. Besides Tengku Razaleigh, the Deputy Prime Minister, Musa Hitam was also implicated in the report of the Committee of Enquiry. The Governor, most probably, needed the advice of the Prime Minister on how to handle the situation. The Prime Minister, most probably, had asked him to report directly to him and not to take any action without consulting him, especially when two top political figures were involved.

When the management of BBMB was informed by the management of Bank Negara to improve the situation of BMF, its Chairman, Nawawi, also reported regularly and directly to the Prime Minister instead of the Governor which would have been the normal banking practice when a bank was facing problems. The Governor, in a way, had been bypassed in the entire affair. Could it be because, as the Governor explained, the Government was the ultimate shareholder of BBMB? Even so, BBMB was still a licensed bank in Malaysia and as with every other bank, it was bound by the Banking Act 1973. Thus, it was under the purview of the central bank. The power and role of the Governor of the Bank Negara had certainly been undermined in the BMF case.



#### **1.2.5. The Prime Minister**

As the Prime Minister was the only one constantly briefed on the case, he must have known about the surreptitious manner in which money was loaned to the Carrian Group to keep it afloat i.e. the buying of the United States assets, the October 4th Agreements, etc.. Did the Prime Minister actually approve these schemes? This led to the suspicion that the BMF case is not a common everyday bank fraud. I believe there was some political involvement in the BMF case as the Governor of the central bank did not take any action which he was empowered to in normal banking practices. Why was there no action taken against Tengku Razaleigh, the Finance Minister and Musa Hitam, the Deputy Prime Minister? Three possible reasons have been given to me by one of my interviewees whom I have agreed not to name:

1. The Prime Minister had no concrete evidence of their involvement;
2. The Prime Minister was ashamed that he was fooled by his trusted colleagues;
3. The political party of the Prime Minister, United Malays National Organisation (UMNO), had received donations from George Tan.

Was the Prime Minister himself involved in any illegal dealings? It was reported in the "Far Eastern Economic Review" (FEER) that the counsel for Hashim claimed the Prime Minister had requested through the then BBMB Chairman, Kamarul Ariffin, that a US\$400 mil. loan be made to an assetless company named Maminco for the purpose of buying

tin to inflate the price of the commodity in the world market (FEER, 29/1/1987). The loan was made in a manner to conceal its nature. It was booked through BBMB's Bahrain branch, but had to be moved when auditors and authorities there objected. Eventually US\$200 mil. was lost on the Maminco transaction.

#### **1.2.6. The Chairman of BBMB and the Supervisory Committee**

The initial steps taken by the management of BBMB, after being informed by the management of Bank Negara, were to send an internal audit team to examine the operations of BMF and to set up a Supervisory Committee. The role of the Supervisory Committee was to oversee the activities of BMF and no loans could be given out by BMF without the consent of this Committee. However, as shown in Chapter 3, loans were still released without the Supervisory Committee's approval. The Supervisory Committee was a farce in the first place because the members of the Executive Committee of BMF who had been breaking the rules from the very beginning of the BMF scandal were nominated into the Supervisory Committee (see sec.4.8, chap.3) i.e. Hashim, Rais and Lorrain Osman. These three members knew of the illegal releases of the loans and yet they did not report them at the Supervisory Committee's meetings. The Supervisory Committee should have consisted of independent candidates to ensure that there was no bias in the decision-making. The Chairman of BBMB, Nawawi, was also the Chairman of the Supervisory Committee and he was responsible for setting up the Committee. He knew of the problems of BMF and yet he had

Rais, Hashim and Lorrain Osman on the Supervisory Committee. This raised the question of the role of Nawawi in the scandal. Since loans were still allowed to be released without the Committee's approval, the Committee had failed in its role. The Chairman of BBMB was also guilty in the BMF scandal for not carrying out his role as Chairman of the Supervisory Committee as well as BBMB.

#### 1.2.7. Jalil Ibrahim

Another step taken by the management of BBMB was to second Jalil Ibrahim from the internal audit team to BMF as a personal representative of the Chairman of BBMB to "put things in order". He was made an Assistant General Manager of BMF. Even with Jalil's presence, all the illegal dealings were still being carried out. Why was Jalil unable to do anything? After all, he was the Assistant General Manager, with the blessing of the Chairman of BBMB, in charge of the accounts section, the loans section and the computer section. There were three possible theories. He was either:

1. instructed by higher authorities to leave things alone as his presence was just for show;
2. he was involved in the illegal dealings himself;
3. as one of my interviewees told me, he had an extra-marital affair which was known by the management of BMF. The management of BMF must have used this piece of information to blackmail him.

Whichever theory was true, the fact was that Jalil finally had enough and wanted to stop the problem. In trying

to stop the loan of US\$4 mil. from being released to the Carrian Group, he was murdered. "Notes for personal file" found after his murder were revealing:

"The bank has been used and commissioned to make money for political ends...the directors have been ignored except where they have political masters and agree to do their bidding...Why should the country suffer because of their greed...I have tried to tell some truth, what good it will do? More likely I will be without employment, but that may be preferable. The lies and falsehoods are too much. The directors may have been lazy, but the politicians have been corrupt. So much for the people, the race and the country. I am just a small part of the deception. I want no more to lie and betray the bank or my family".

(South China Morning Post, 4/7/1993)

In an official letter to Nawawi, Jalil stated, "Many blunders have been made by the directors and management, but such political influence makes it difficult to know what is intended to be the interests of the bank and the country" (South China Morning Post, 4/7/1993). He went on to say the roles of Tengku Razaleigh, the then Finance Minister and Musa Hitam, the then Deputy Prime Minister, and the actions of Ibrahim Jaafar, General Manager of BMF, made it impossible to take effective action to resolve BMF's problems.

Jalil's murderer, Mak Foon Than, initially said the murder was ordered by George Tan and that he had also worked for Tengku Razaleigh, the Finance Minister of Malaysia, for several years. He was in Hong Kong collecting money from businessmen on behalf of the Minister. He later denied making that statement to the police and that, "We all know him (Tengku Razaleigh) to be a good, honest and trusted minister" (see sec.4.10.4, chap.3). Tengku Razaleigh

vigorously denied he knew Mak and asserted that there was a plot to ruin him politically which was locally hatched in time for the elections (FEER, 17/5/1984). The truth of who was behind the plot to murder Jalil and whether there was any political involvement was never found out. Mak's trial certainly left a big question mark over Jalil's murder. It certainly strengthened the suspicions that the BMF case was not just any ordinary fraud case.

#### **1.2.8. Who was to blame for the BMF scandal?**

When the whole scandal surfaced with the murder of Jalil Ibrahim in July 1983, the first thing that the people directly and indirectly involved in the running of BMF did was to disclaim responsibility. On 11 October 1983, the Prime Minister said that the management of Bank Negara was apparently unaware of the BMF affair earlier on (Lim, 1986; 269). The Prime Minister also mentioned that BBMB was under the Finance Ministry during the whole period of the BMF scandal. When the Finance Minister was questioned on the matter by the leader of the opposition party, the Democratic Action Party, the following day, Tengku Razaleigh replied that if the Prime Minister said he was in charge, then he was in charge. However, earlier on, in February, it was reported in the "Far Eastern Economic Review" that Tengku Razaleigh stressed that as a Government-owned agency, Bank Bumiputra answered directly to the Prime Minister's Department. He also said, "As Finance Minister, I am obviously not involved in the running of the banks...I left Bank Bumiputra in 1976 and have had no involvement in its

operations since" (FEER, 21/4/1983). There was confusion as to which Minister was in charge of BBMB and this was a disturbing sign of poor management and leadership by the Government. What was clear was that the bank was set up with public funds channelled through the Finance Ministry and was charged with helping Bumiputras (FEER, 21/4/1983). Kamarul Arrifin, the Chairman of BBMB until 9 February 1982, also denied that he had knowledge of the BMF loans to Carrian as they were never brought up at the Bank's Board meetings. He went on to say that while he was the bank Chairman, his policy was that no funds were to be given for loans overseas and he was not aware that any funds had been given to BMF by BBMB. His statement was contradicted by Mat Noor, a senior partner of Hanafiah Raslan & Mohammad, auditors of BBMB, who made a formal statement to the Committee of Enquiry that he had advised him not to concentrate the loans to one customer. Mat Noor also revealed to Kamarul that there could be a possible case of corruption as the Carrian Holdings Limited (CHL) had guaranteed an overdraft facility for HK\$1 mil. from Bank of Communications for Ibrahim.

On 12 October 1983, Kamarul revealed that owing to the size of the loans given out by the management of BMF, the management of Bank Negara must have known and approved of the BMF loans; "Bank Bumiputra Malaysia is no ordinary bank. Because of its ties with the Government, it has characteristics that other banks don't possess. No important decisions are taken without the agreement or knowledge of the Government or the central bank". He went on to stress that loans of the size given to Carrian would "ordinarily

require ministerial acquiescence" (Chung, 1987; 34, NST, 13/10/1983). How could the Chairman and the Directors of BBMB know nothing about the billions of dollars given out to its subsidiary? How could the management of Bank Negara not know about the lending and allow such imprudent transactions to continue? The BMF Director's Report and Accounts in 1981 clearly showed BMF owed the parent company, BBMB, HK\$1,879 mil. at the end of 1981 as compared to HK\$1,088 mil. at the end of 1980. Furthermore, the published annual reports of BMF revealed that in 1980, its issued outstanding loans amounted to HK\$1,250 mil. while in 1981, it was HK\$2,032 mil. (Lim, 1986; 267). The Chairman of BBMB and Bank Negara had been grossly negligent in their duties and they were trying to disclaim responsibility for the scandal. The Prime Minister and the Finance Minister, too, were trying to wash their hands of the case. The opposition party, the Democratic Action Party, said that one exhibit in the report of the Committee of Enquiry, a BBMB internal memo, which was originally omitted, showed in 1979 and 1980, BBMB had "excessive money" which it could lend out through foreign exchange and money market operations. In 1980, Petronas, the national oil company, was to deposit M\$50 mil. a month with BBMB. This led to the problem of finding "an outlet to these excess funds" and BMF in Hong Kong was selected as a vehicle to channel part of the money (Lim, 1986; v). Thus, it is highly unlikely that BBMB management in Kuala Lumpur and the political leaders were unaware of the BMF scandal from the very beginning as part of the BMF money used to finance the Carrian Group was Malaysia's 'petrol-dollar'. By claiming

ignorance, these people also showed they did not carry out their role and duties which they had agreed to do.

Perhaps, disclaiming responsibility for such a colossal scandal was a natural thing for them to do in the first instance. But, what was disheartening was the extent to which these people tried to hide the facts of the case from the public. There was a systematic cover-up of the case from the Malaysian public:

1. September 1982 - When the "Asian Wall Street Journal" first published in detail the case, Nawawi denied the extent of involvement;
2. February 1983 - The Finance Minister said the loans were "nothing more than a normal business problem";
3. July 1983 - The murder of Jalil Ibrahim led to the arrest of George Tan and the revelation in court of BMF involvement with the Carrion Group. Nawawi still claimed "there was no crisis". Kamarul, Lorrain, Hashim and Jaafar were made scapegoats concerning acceptance of HK\$3.3 mil. consultancy fees, on top of their salaries, which they received from BMF. However, the Prime Minister protected them by saying, "what they did was morally wrong although legally, it was within the law, we cannot take them to court";
4. March 1983 - the Finance Minister invoked the Central Bank Ordinance 1958 and the Banking Act 1973 to justify banking secrecy when questioned by the opposition party;



5. 1983 - The scandal coincided with the constitutional crisis over the power of the Malay Rulers and also the introduction of the new Official Secrets Act;
6. January 1984 - Public pressure to set up a Royal Commission which was rejected by the Government. Instead a limited Committee of Enquiry was set up;
7. January 1986 - Government reluctance to publish the report of the Enquiry. Due to public pressure, 2,000 copies of the report were finally published at the price of M\$250 (approximately £63) per set which was beyond the reach of many Malaysians;
8. March 1986 - the Government white paper was produced, but it left out many details reported by the Committee of Enquiry.

The Government of Malaysia would have succeeded in covering up the case had it not been for three factors beyond their control:

- a. The scandal was in Hong Kong over which they did not have full influence;
- b. The murder of Jalil Ibrahim which led to investigations by the Hong Kong authorities;
- c. The collapse of the Hong Kong property market which led to the liquidation of the Carrian Group.

When the case surfaced with the murder of Jalil Ibrahim, Malaysian citizens, including members of the opposition parties and social pressure groups, appealed to

the Government to set up a Royal Commission, but was surprised the Government was reluctant to do so. The Prime Minister even gave the excuse that a Royal Commission would only perpetrate a witch-hunt (Malaysian Business, 1/4/1986). Eventually, due to pressure from the public, a limited Committee of Enquiry was set up. The Government was also very reluctant to answer questions from members of the opposition parties. The Finance Minister invoked the Central Bank of Malaysia Ordinance 1958 and the Banking Act 1973 to justify the secrecy of the case.

When the Committee had finished the report, which cost the Malaysian taxpayers M\$1.8 mil., the Government was very reluctant to have it published so that the general public would have access to it; the reason being to protect the Government from possible cases of libel (see sec.1, chap.3). Even with protests from the public, the opposition parties and pressure groups, the Government was still reluctant to do so. Eventually, two members of the Committee, Ahmad Noordin and Chooi Mun Sou, agreed to take responsibility for any legal case arising. Instead of praising Ahmad Noordin for a colossal job well done under limited powers and terms of reference, the Prime Minister took Ahmad Noordin to task on several points, including the release to the press of the contents of his "personal and confidential" memorandum. The Prime Minister also informed Ahmad Noordin that if "damage is done to the credibility or creditworthiness of BBMB" as a result of publishing the report, "the bank will be fully justified in suing you for damages" (FEER, 30/1/1986). The Prime Minister also reprimanded him for seeking self-

glorification and publicity, overstepping the terms of appointment and not following proper procedures in advising and informing the Government. As Karim said, "Basically, he was chided for not toeing the line" (Karim, 1989; 109). Instead of praising him for his honesty, integrity and hard work which should accord him immunity by the Government, he was criticised publicly. The culprits, as seen by the Prime Minister, were no longer to be blamed. Instead the critics, the opposition parties, social interest groups and newspapers were condemned for wanting justice and honesty in the country. The Prime Minister even accused these people of wanting to destroy BBMB. He further alleged that these people were also using the scandal to topple "the Malay leadership" (Aliran, 1988; 202). He had forgotten that the people who would destroy the bank and the Malays were the people who ran away with the M\$2.5 bil.. Why was the Prime Minister so reluctant to let the public have access to the details of the case? The actions of the Prime Minister certainly raised the question of whether he was involved himself or what was he trying to hide. In the earlier section (sec.1.2.5) of this chapter, the Prime Minister was shown to be involved with the Maminco deal where loans of US\$400 mil. from BBMB was used for inflating the price of tin in the world market. He was certainly involved in some illegal dealings with BBMB.

As discussed in chapter 3, the appointment of a Committee of Enquiry instead of a Royal Commission was not a satisfactory move as the Committee lacked the powers of a Royal Commission since it derived its authority from BBMB,

it had no power to initiate legal actions. Its findings and recommendations could only form the basis for determining if civil or criminal proceedings should be instituted against those named in its report by BBMB. A Royal Commission, on the other hand, could direct the Public Prosecutor to investigate any matter relevant to the enquiry. Thus, through the Public Prosecutor, the Royal Commission could then initiate legal actions. As pointed out in Appendix 1 of chapter 3, the investigative members in the Committee as well as its witnesses were not protected by law against any libel or defamation suits against them unlike those appointed to the Royal Commission. Without the protection of the law, the media would also be reluctant to report the full findings of the Committee, especially controversial issues which implicated certain people. The media would be forced to report only on the Government white paper which was tabled after the publication of the Committee's report and deemed a 'whitewash' by the opposition party and pressure groups. Indeed, it was reported by Aliran, an informal movement in Malaysia for freedom, justice and solidarity, that the Director-General of Information Services had sent a circular to newspapers and those in the electronic media advising them not to veer from the Government White Paper in their news reports (Aliran, 1988; 222). The Government's choice of the Committee of Enquiry instead of a Royal Commission might be a deliberate attempt to prevent the public from knowing the truth of the BMF scandal.

### **1.3. The roles of the regulating agencies**

#### **1.3.1. The Attorney-General**

The then Attorney-General's attitude towards the BMF case was also open to suspicion. There was strong evidence that fraud and corruption had been committed from the investigations done by Bank Negara, BBMB as well as the Committee of Enquiry. Yet, the Attorney-General refused to take any action stating that, "No evidence, no prosecution". The Committee of Enquiry had the Government's approval and yet its findings were not used by the Attorney-General because he claimed only police investigations would be taken into account. If that was so, the Attorney-General should have instructed his department to carry out its own investigation instead of waiting for evidence to "fall from the sky". He should have used evidence from the Committee of Enquiry like letters, documents, etc., as leads in the police investigation as these would save the police department time and money. The Attorney-General also gave the excuse that the BMF culprits could not be prosecuted in Malaysia for offences committed outside the country. The Attorney-General should have known that the Prevention of Corruption Act 1961 (section 27) provided extra-territorial powers to the Malaysian Courts to try corruption offences committed overseas. The various investigations certainly suggested corruption in their reports and the Attorney-General should have taken up the cases.

During the two years' investigation into the loss of M\$2.5 bil., Lorrain Osman had been openly coming and going from Malaysia to London where he lived. Reliable Government

sources had told "Far Eastern Economic Review" he had visited Malaysia several times during 1985 in an effort to divest assets without any hindrance (FEER, 19/12/1985). The Star newspaper also reported on 18 August 1985 that Lorrain Osman had a fake Portuguese passport in the name of Chong Toong Fatt which bore his photograph and was used a number of times. When the Attorney-General in Malaysia was questioned on the possibility of seizing the passports of certain prominent individuals, he replied, "Everyone is innocent until proven guilty and if they want to run away, I cannot stop them" (Star, 30/11/1984). It was evident that the Attorney-General was reluctant to charge anyone. Why did the Attorney-General not carry out his duties? Was he instructed to cover-up the scandal? It seemed to be so. The leader of the opposition party, the Democratic Action Party, correctly stated that, "The Prime Minister, the Attorney-General and the Government leaders agree that the BMF scandal is a "heinous crime", but they also seem to believe that there are no heinous criminals. The BMF scandal is now coming to be seven years old, but the Attorney-General has not prosecuted a single person for the BMF loans scandal" (Lim, 1986; 56).

#### **1.3.2. The Anti-corruption Agency**

The personnel of the Anti-Corruption Agency, which was supposed to be an independent body empowered to bring any corruption cases to justice, also did not take any action. The personnel of the Anti-corruption Agency must have been aware of the "Asian Wall Street Journal" of 18-19 March

1983, which named certain individuals and their corrupt acts. It reported that Hashim Shamsuddin, the Director of BMF and BBMB, and his wife owned a Hong Kong company called Silver Present on 5 September 1981. Three days later, Silver Present received a HK\$3.6 mil. cheque from Chung Ching Man's (Chairman of the Eda Group) wife. Two days after the cheque was issued, the management of BMF lent Eda Group US\$40 mil.. On the same day that Silver Present received the HK\$3.6 mil. cheque, another Hong Kong company, Knife & Dagger, whose shareholders were George Tan and his secretary and whose General Manager was Ibrahim Jaafar (General Manager of BMF), also received a cheque of HK\$3.6 mil. from the account of Chung's wife. The Journal went on to report that at about the same time, Ibrahim also received HK\$1 mil. facility from the Bank of Communications guaranteed by CHL. This was not the first time Ibrahim had loans guaranteed by the Carrian Group. Another time was in January 1980, when Knife & Dagger deposited HK\$372,000 with Wing Lung Bank to guarantee a banking facility for Ibrahim (Lim, 1983; 10-11). This report from the "Asian Wall Street Journal" should have been enough to get the personnel of the Anti-corruption Agency into action.

On 27 May 1986, at London's Bow Street Magistrates Court, Clive Nicholls, counsel for the Hong Kong Government, claimed that Lorrain Osman collected corrupt payments amounting to almost HK\$125 mil. while Hashim collected almost HK\$20 mil.. These corrupt payments allegedly consisted of money payments, profits and dividends from the deposit or sale of shares and warrants, airline tickets for

Hashim and his family, and his wife was given a £40,000 Daimler car in London (FEER, 12/6/1986). The Anti-corruption Agency was supposed to be an independent and impartial body. It was well known in Malaysia for starting an investigation on anyone when there was a complaint as the Director-General of the agency under the Anti-corruption Agency Act 1982 had the powers of a Deputy Public Prosecutor under the Criminal Procedure Code and all the powers of an officer of the Agency. Also, according to the Act, an officer of the Agency should be deemed to be a police officer and should have all the powers and immunities of such officer appointed under the Police Act 1967 and the Criminal Procedure Code and any written law should be construed accordingly. This meant that section 21 of the Prevention of Corruption Act 1961 would apply to officers of the Anti-corruption Agency which stated, "Whenever it appears to any officer of or above the rank of Inspector that there is reasonable cause to believe that in any place there is concealed or deposited any evidence of the commission of an offence under this Act, or of any prescribed offence, and the police officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of the place all the powers mentioned in subsection (1) in as full and ample a measure as if he is empowered to do so by warrant issued under the subsection". Section 23 of the Act also allowed the Public Prosecutor, under reasonable grounds of suspicion, to authorise the police to investigate any bank account, share account or purchase account, expense



account or any other account, or any safe deposit box in any bank, and should be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorized. With such wide powers, why the personnel of the Anti-corruption Agency did not, acting as its usual diligent self, start an investigation based on the reports of the "Asian Wall Street Journal", especially when none of the people accused by the Journal had taken legal action to sue the Journal for libel. In fact, at the height of the scandal, the personnel of Anti-corruption Agency kept a very low profile.

The Committee of Enquiry had said at the end of its Final Report that, "Irregularities and crimes such as we have recounted occur because of failings in the system or in the individuals who operate it. We do not consider that there were failings in the Malaysian banking system. Conventional banking procedures and controls existed and were generally used satisfactorily by those concerned. But in the cases on which we reported the individuals, including some at the very top of the system, failed to take appropriate control measures when they had discovered at least a part of what was going wrong. If they themselves disregarded or circumvented the controls which they had been charged to exercise, then, who else could ensure that the control system is effective?" (Lim, 1986; 47).

The final section of part one of this chapter will look at the culprits in the BMF scandal.

#### **1.4. The culprits of BMF**

One section of the BMF final report highlighted the conflict of interest of the Directors, the General Manager and the staff members of BMF. They were dealing extensively, in their personal capacity, in Carrian shares and warrants. In fact, they relied heavily on the advice of George Tan when buying and selling these shares (see sec.5, chap.3). George Tan even gave a present of two million shares to the staff members of BMF. As the leader of the opposition party, the Democratic Action Party, pointed out, "it is up to anyone's imagination to visualise how much the Chairman, the Directors and the Managers of BMF would be worth if the staff are already worth two million CIL shares. When the first million shares was given in December 1981, the price of CIL shares was quoted on the Hong Kong Stock Exchange at the average price of HK\$4.90 - making the first one million CIL shares worth about HK\$4.9 million" (Lim, 1986; 39).

The General Manager of BMF, Ibrahim Jaafar, also had very strong business connections with the Carrian Group which he did not declare to the Board of BMF and BBMB. For example, he was made General Manager of Knife & Dagger, a company belonging to George Tan and his secretary. There was a definite conflict of interest between his positions as General Manager of BMF and General Manager of Knife and Dagger, a company of George Tan which had borrowed extensively from BMF. Ibrahim had also been accused by the Eda Group of lending their shares to CHL for their use.

The Committee of Enquiry also found that in addition to the normal directors' fees, BMF also paid consultancy fees

for services rendered in negotiating and processing loans to its two directors, Lorrain Osman and Hashim Shamsuddin, the alternate director, Rais Saniman and the then Chairman of BBMB, Kamarul Ariffin. The fees amounted to HK\$0.8 mil., HK\$1.0 mil. and HK\$1.4 mil. in 1979, 1980 and 1981 respectively. The consultancy fees were not disclosed in the annual accounts of BMF (Karim, 1989; 119).

There was definite collusion between the management of BMF and that of the Carrian Group to defraud BMF. No doubt there were legitimate businesses being carried out by the bank, but these were just a front to the illegitimate business that was going on behind. The M\$2.5 bil. that was lost was definitely much more than the amount brought in by legitimate businesses. Why did the management of BMF want to defraud BMF when they were paid very well with many extra benefits? In 1980, the breakdown of the emoluments for the Bank Bumiputra Executive Chairman was: annual salary about M\$90,000, allowance about M\$100,000, bonus about M\$100,000, fees about M\$14,000. Apart from that, the Executive Chairman was also given a car and a chauffeur, Employees Provident Fund contribution of about 30%, a fully furnished house, free telephone, water and electricity, cook, gardener and a round-the-clock security officer, two months' paid leave and free passage and accommodation for his family and personal officer in Malaysia for journeys to any part of the world, the best medical and dental services in any part of the world plus the fare and personal accident insurance worth M\$1 mil.. In 1977, the emoluments which Kamarul received from Bank Bumiputra were said to be about M\$220,000, in 1979

about M\$250,000 and in 1980 about M\$300,000. Hashim Shamsuddin received about M\$167,000 in 1977 and M\$220,000 in 1980 (NST, 15/1/1984). There is no doubt the fraudsters were motivated by greed rather than need. How did these people get these high-ranking jobs with such good pay? Did they act in concert from the start? The following account in this section will show that the Board of Directors of BMF were close friends of some high ranking politicians who would be able to appoint them to these jobs. I believe that the management members of BMF were not the only guilty party. The case had strong hints of close political involvements. The case was clearly one of "differential association"<sup>2</sup>. It was possible that the management of BMF acted in concert with these corrupt politicians from the start.

The politicians implicated in the report of the Committee of Enquiry were high ranking officials of the ruling party. The two Ministers who were openly implicated were Tengku Razaleigh, the Minister of Finance, in connection with the purchase of Gammon House (see sec.4.1.1,

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<sup>2</sup>Sutherland proposed what became known as the theory of differential association i.e. "...criminal behaviour is learned in association with those who define such behaviour favourably and that in an appropriate situation engages in such criminal behaviour if and only if the weight of the favourable definitions exceed the weight of the unfavourable definitions..." (Sutherland, 1949; 234). Sutherland went on to contrast his theory with the theory of social disorganisation. "Differential association is a hypothetical explanation of crime from the point of view of the process by which a person is initiated into crime. Social disorganisation is a hypothetical explanation of crime from the point of view of the society. These two hypotheses are consistent with each other and one is the counterpart of the other. Both apply to ordinary crimes as well as to white collar crimes" (Sutherland, 1949; 253).

chap.3) and Musa Hitam, the Deputy Prime Minister, in connection with the purchase of Grand Marine Holdings (see sec.4.3.1, chap.3). Tengku Razaleigh denied he was involved and claimed that there was a plot to topple him politically. Perhaps there was some truth in what he had said as the person who revealed his involvement was Rais Saniman, a good friend of Musa Hitam, the Deputy Prime Minister, to whom Tengku Razaleigh lost the post. However, based on the facts found by the Lorrain Osman Appeal Committee (see sec.3, chap.3), Tengku Razaleigh was not that innocent. I believe there were other politicians involved, too. It was hardly surprising as the fraud and deception were carried out in a very bold manner, for example, loans were made without proper paperwork or collateral. There must have been political connections for such bold actions to be carried out. The "who is who" in section 3 of chapter 3 showed that the Directors and General Manager of BMF and the Carrian people seem to mingle in the same crowd i.e. the Malaysian politicians and the upper class in social functions. The BMF scandal gave the impression that members of this elite group shared a very special relationship which allowed them the freedom to do whatever they wanted without the knowledge of anyone from outside this group. This was because the members of this elite group would cover-up for each other. This elite group also seemed to be powerful and wealthy enough to influence the law enforcement agencies in Malaysia like the police and the Anti-corruption Agency.

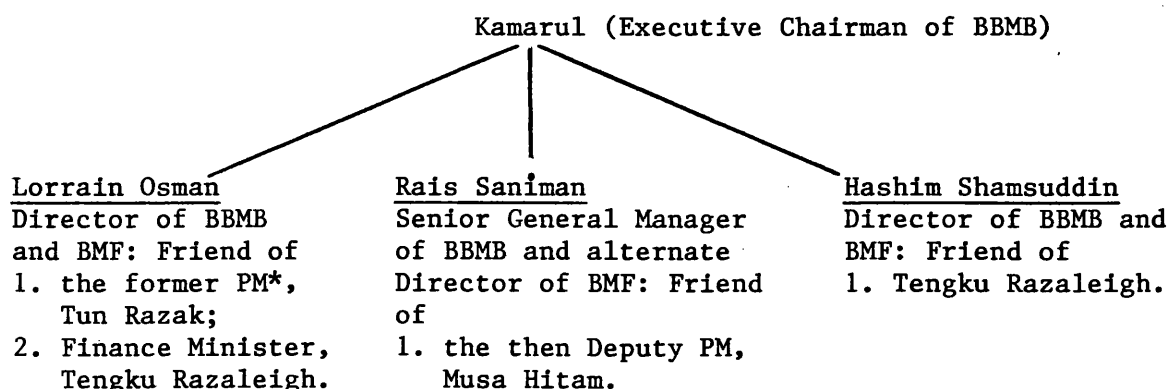
In the BMF case, it is not difficult to understand that the politicians would not want to cover-up a scandal if they

were not involved themselves. At the height of the scandal, the opposition party even made the accusation that "the Carrian Empire was a mere house of cards and the BMF-Carrian tie-up was a massive joint operation of fraud and deception right from the beginning" (Lim, 1986; 44). The report of the Committee of Enquiry pointed out, "There might not have been Carrian without BMF" because of:

- a. the free-flowing funds provided by BMF to them;
- b. BMF and BBMB tried to keep Carrian afloat when it was on the brink of collapse by releasing loans to Carrian in surreptitious ways and;
- c. the purchase of Carrian assets at inflated prices.

The following accounts will give more detail of the strong political ties the members of the management committee of BMF had. With this close connection, it was not surprising at all if high ranking politicians were involved in the scandal (see Diagram 1 below).

Diagram 1



\*PM denotes Prime Minister

Kamarul was a practising lawyer when he was requested by the national leaders to serve as Executive Chairman of BBMB.

Lorrain Osman had been Director of BBMB since the inception of the bank in 1965. He was regarded as the most influential and powerful Director of BBMB. His influence was not due to his seniority alone, but also to his close ties with national leaders such as the former Prime Minister, the late Tun Razak, who appointed him as BBMB Director, and Tengku Razaleigh, the first Chairman of BBMB. He was also a member of the Prime Minister's economic panel. His success in the business world was said to be due to his ties with political leaders and his liberalism in business ethics. He was said to be a strong advocate of free trade (*laissez-faire*) in whatever circumstances (NST, 15/1/1984).

Hashim joined the bank when Tengku Razaleigh, a college friend of his in Belfast University, became the first Chairman of BBMB. In 1972, he was made the Chief Assessment Officer and later appointed Secretary and Domestic Deputy General Manager. In 1975, he became a member of the Board of Management of BBMB. Kamarul appointed him as Executive Director in November 1976. Associates who knew him well regarded him as a competent banker (NST, 15/1/1984).

Before Rais Saniman became Director in the International Division of BBMB in 1976, he had served with the International Monetary Fund, Federal Reserve Bank America, Bank of America and Bank of England. It was reported in New Straits Times (NST) on 15 January 1984, that he was responsible for spreading the wings of BBMB abroad, making it an international bank. He was a respected banking personality at home and abroad because of his efforts and success. He claimed to be "orally appointed" as the

alternate Director of BMF by Hashim. However, Hashim revealed that the Deputy Prime Minister, Musa Hitam, had earlier told him that he could stay in his job provided he did not oppose any loans proposed by Rais.

It could be seen that each one of the members of the management committee of BMF had a patron or some political links. These political links must have been corrupt or else tolerant enough to give the management committee the confidence to defraud BMF at such a grand scale.

Kamarul's statement, when he defended himself, was that, "three or four more Carrian-like problems are looming within Malaysia in the 1980s" (Lim, 1986; 293). He also said, "There will be another Carrian, perhaps affecting one of the high-fliers, even Permodalan Nasional (another public institution which originally held 70% controlling shares of BBMB before being taken over by Petronas, the national oil company) itself" (FEER, 27/10/1983). Was he implying that the same people involved in the BMF case would also be involved in these three or four other cases? Was he also implying that the same type of crisis as the BMF were also affecting other Government agencies like Permodalan Nasional? Was that why the Government was reluctant to have any publicity for the BMF case because it was afraid that the public might also discover these other cases when they started probing into the BMF scandal, for example, the involvement of the Prime Minister in the Maminco case of inflating the price of tin in the world market? Hashim had also claimed via his counsel that Petronas, the national oil company, had been made to appear to make a M\$5 mil. (US\$1.92



mil.) loss on currency dealing to provide for a donation requested by "a high political authority which I am not permitted to name" (FEER, 29/1/1987). There were certainly other big scandals involving politicians after the BMF case which occurred along similar lines; one of which would be discussed in the next chapter.

After more than ten years, the BMF case was still not solved. There was still confusion as to who were involved. As the case dragged on, suspicions, too, increased as to who masterminded the scandal. The question still remained whether George Tan was the only mastermind and Lorrain Osman, Hashim Shamsuddin, Rais Saniman and Ibrahim Jaafar his collaborators. Was the Government involve in the scandal? The fact that the Gammon House and the Grand Marine deals fell through could imply that the Malaysian Government was not involved in the scandal. Moreover, it was also not wrong for George Tan to make a quick profit from the Malaysian Government as it could accept or reject the offer. However, if some politicians schemed with George Tan to make a profit, then there was definitely a corrupt deal. Perhaps the Government abandoned the two deals on purpose to use them as ploys to confuse the public as to whether the Government was involved. Moreover, any profits made from the two deals could be easily found out and questioned openly by critics whereas the other deals made surreptitiously with Carrian were too complicated to attract attention. The fact that George Tan sent a letter to Tengku Razaleigh, still acting as agent for the purchase of Lap Heng Building instead of Gammon House for the Government, which was not

disclosed in the report of the Committee of Enquiry raised the question that the Government may still be involved in the scandal (see sec.4.1.1, chap.3). The general belief was still that some other people, with power and position, must be involved, but nobody had enough information or proof to bring them to justice. In fact, George Tan was believed not to be the ring leader. He was just a puppet being used and Lorrain Osman, Hashim Shamsuddin, Rais Saniman and Ibrahim Jaafar were the scapegoats to be sacrificed. Will the truth ever be revealed? The case is about to be tried again in court. Hopefully, this time justice will be done.

## **2. Problems of the BMF case at the macro level**

Section 2 of this chapter will analyze the problems of the BMF case in relation to the wider society i.e. in a macro way. I will begin with analysing the Malaysian political ideology i.e. communal politics and how the policies formulated under such a political ideology prove beneficial to corrupt politicians and politicians with other vested interests. I will then relate it to the BMF case as well as the other major fraud cases in Malaysia.

### **2.1. Malaysian political culture**

#### **2.1.1. New Economic Policy and the quota system**

Politics in Malaysia, as explained in chapter 1, is communal or ethnic politics. Most politicians will project themselves as the protectors of the economic, political and cultural aspects of their own community. So long as politicians use communal sentiments in their campaigns, they

will be guaranteed a large following.

The ruling party in Malaysia is the Barisan Nasional which comprises the coalition of the United Malay National Organisation (UMNO), the Malaysian Chinese Association and the Malaysian Indian Congress. The main opposition parties are the Democratic Action Party, Semangat '46 and Partai Islam SeMalaysia. The racial riot of 1969 (as explained in chapter 1) led to the introduction of the New Economic Policy which aimed to attain national unity by redistributing the country's wealth so that it would be shared in a more equal manner among the different races as well as to eradicate poverty. However, the objectives of the New Economic Policy have been abused by politicians and other people with vested interests over the years. Instead of attaining national unity and eradicating poverty, there is disunity as ethnicity begins to play a very major role in Malaysian politics and a large proportion of the people are still living in poverty. Communal politics has become institutionalised over the years. In almost every sphere of public life i.e. in the economy, in politics, in culture and in education, policies have been formulated with ethnic characteristics and ethnic issues have become commonplace among the Malaysian citizens. I will discuss this point further to show how ethnicity has pervaded almost every aspect of life in Malaysia. My conclusion is that ethnic policies implemented to help the Bumiputras (the Malays and other indigenous people) actually benefitted only a small group. Finally, I will show how some politicians could use the New Economic Policy and communal politics for their own

interests.

Public policies based on ethnic lines, which are formulated after the introduction of the New Economic Policy, have actually led to a deterioration in ethnic ties. When policies are implemented with privileges and quotas based on ethnic considerations which are going to affect the lives and basic rights of people, for example, in education, employment, housing, business and industry, it should not be surprising that it will widen ethnic segregation. This will be illustrated in the later part of this section. It is sad that in Malaysia, religion has also been used to promulgate this division. The Malays are Muslim, the Chinese are mainly either Buddhist, Taoist or Christian and the Indians are either Muslim, Hindu, Sikh or Christian. The basic religious division in Malaysia is seen as between the Muslims and the others. Malay nationalism is synonymous with Muslim nationalism. Once politics is mixed with religion, it becomes an even more powerful tool for the Government to dictate to its people because religious principles cannot be questioned, argued or compromised. Thus, with the emphasis of ethnicity through religion, it becomes even more difficult for the different ethnic groups to integrate. The colonial ways of "divide and rule" (see chap.1) have proved to be a useful tool for the post-Independence rulers and elites.

I am not, in any way, trying to criticise the objectives of the New Economic Policy. I am merely trying to show that the implementation of the New Economic Policy has been abused to the advantage of only a small group of

people. In fact, the objectives of the New Economic Policy which were introduced to attain national unity by helping the poor Malays and other Bumiputras and "eventually eradicate poverty by raising income levels and increasing employment opportunities for all Malaysians, irrespective of race...accelerating the process of restructuring Malaysian society to correct economic imbalance, so as to reduce and eliminate the identification of race with economic function" (see chapter 1), should be welcomed and encouraged by all Malaysian citizens. Unfortunately, the practice is something else. The Prime Minister of Malaysia once declared, "...in trying to redress the imbalance it will be necessary to concentrate your effort on the Malays, to bring out more Malay entrepreneurs and to bring out and to make Malay millionaires, if you like, so that the number of Malays who are poor, equals the number of Chinese who are poor and the number of unemployed Malays equal the number of unemployed Chinese, then you can say that parity has been achieved". Thus, UMNO's (the ruling Malay party) determination is to strengthen the Malay economic position in commerce and industry. UMNO believes that the power of the Malays will increase with economic strength. The emphasis then is upon the creation of Bumiputra entrepreneurs, executives, managers and professionals. The introduction of the New Economic Policy has enabled the rapid expansion of a small group of Malay middle and upper classes in the last twenty years. A good example would be the distribution of the Amanah Saham Nasional shares among the Bumiputras. At the end of December 1985, 10% of the top investors in the Amanah

Saham Nasional schemes accounted for 40% of the shares while the remaining 90% of investors owned only 60% of shares. This showed that a small Bumiputra elite owned and controlled wealth allocated to the entire community (Muzaffar, 1989; 80). Liow, in his article "Malaysia's New Economic Policy and the restructuring of commercial banks, 1971-1983", noted that each time a commercial bank was restructured to meet the New Economic Policy requirement, there were at least four groups of Bumiputras who would like to benefit from it, namely:

1. The Bumiputra management and staff of the particular bank;
2. The few Bumiputra individuals who had strong connections and influence with the Government or members of the royalty;
3. The Bumiputra institutions with large numbers of participants, for example, the Armed Forces Fund, Pilgrims Fund, Police Co-operative and the FELDA Settlers' Co-operative; and
4. The emerging and self-made Bumiputra professionals such as lawyers, accountants and architects who had benefitted from the educational and other opportunities of the New Economic Policy.

(Liow, 1986; 22-23)

"However, it would appear that Bumiputras who had powerful connections with the right officials in the Government were most successful in establishing or increasing their interests. In fact, they were aware of opportunities even

before transactions were put to the Foreign Investment Committee" (Liow, 1986; 23). Further illustration of this inequality will be given in the later part of this section.

As the Malay middle and upper classes become more and more powerful, UMNO also becomes stronger and stronger. However, a large proportion of the Malays are still living in poverty as the data below will show. As Chandra Muzaffar, the ex-President of Aliran, an informal movement in Malaysia for freedom, justice and solidarity, correctly questioned, "How could a deliberate creation of a number of capitalists help a few million impoverished, exploited rural Malays?" (Muzaffar, 1989; 9). Also, will the creation of Malay millionaires and capitalists help to achieve national unity? What the Prime Minister said is totally out of the context of the New Economic Policy. The data below will show that only a small group of elites has actually benefitted from the New Economic Policy.

The Third Malaysia Plan 1976-1980 claimed that poverty had been reduced, after the introduction of the New Economic Policy, in some of the poverty groups. However, Muzaffar reported that there was actually an overall increase in poverty among the main poverty groups. Among rubber smallholder the incidence of poverty from 1970 to 1975 increased by about 7,400. There was a drop in the incidence of poverty in the paddy sector in Peninsula Malaysia by 11% in 1975 from 88% in 1970 while the number of households in poverty was reduced by over 9,000. The Malays constituted the majority in both these sectors. But, among the fishing community of the east coast of Peninsula Malaysia where

Malays preponderated, "the incidence of poverty remained at a high level of 90%". The estate workers, 32% of whom were Malays, showed an actual increase in the incidence of poverty during 1971-75 while "the absolute number of non-agricultural households in poverty expanded by 23% during the same period, reflecting perhaps an upsurge of poor, urban families where a large proportion are Malays" (Muzaffar, 1989; 27).

The Mid-Term Review in 1983 stated that the overall incidence of poverty which had dropped from 49.3% in 1970 to 43.9% in 1975 and 29.2% in 1980, had increased slightly to 30.3% in 1983 (Lim. 1986; 378). In 1984, the overall incidence of poverty was 20.7%. It declined to 19.3% in 1987 (Mid-term Review of the Fifth Malaysia Plan, 1986-1990). Official poverty rate in Malaysia is measured on "the basis of a minimum expenditure level or the poverty line income to separate the poor from the non-poor. The expenditure reflects the absolute poverty level which is determined relative to the prevailing standard of living of the country. The poverty line income essentially consists of three major components that include food, clothing and footwear, and the non-food items such as rent, fuel and power, transport and communications, health, education and recreation. The poverty line income is updated annually using the Consumer Price Index to reflect changes in price levels. For 1987, the poverty line income is about M\$350 (approximately £88<sup>3</sup>) per month for a household of 5.14 persons in Peninsula Malaysia, M\$429 per month for a

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<sup>3</sup>1994 exchange rate.



household of 5.24 in Sarawak and M\$533 per month for a household of 5.36 in Sabah" (Mid-term Review of the Fifth Malaysia Plan, 1986-1990).

However, a survey by the Socio-Economic Research Unit of the Prime Minister's Department in 1982, based on a poverty line of M\$384 for a five-member household, found 42.8% of the population below the poverty line. The differences in the poverty figures for the various socio-economic groups (which are the main poverty groups) between the Mid-Term Review in 1983 and the survey by the Socio-Economic Research Unit are even more prominent as shown below.

Table 4.1

	*FMP 1980	MTR 1983	SERU 1982
Rubber smallholder	41.3%	61.1%	69.2%
Oil Palm smallholder	7.7%	1.5%	56.3%
Coconut smallholder	38.9%	32.7%	77.6%
Paddy farmers	52.7%	54.0%	76.2%
Fishermen	45.3%	44.7%	72.8%

\*Fourth Malaysian Plan 1981-1985

Source: Lim, 1986; 379.

As with the education situation, taking only enrolments in local universities and colleges, the Malay proportion had increased from 49.7% in 1970 to 65.1% in 1975 while the percentage for the Chinese had dropped from 42.7% in 1970 to 31.1% in 1975 and in the case of the Indians it was 5.1% in

1970 and 3.3% in 1975. In the five local universities, the Malay percentage had increased from 39.7% to 57.2% in 1975 while the Chinese percentage had dropped from 49.2% in 1970 to 36.6% in 1975 and with the Indians from 7.3% in 1970 to 5.2% in 1975 (Muzaffar, 1989; 28 & 32). Between 1970 to 1983, the percentage of Malays in domestic tertiary institutions funded by the Government had increased from 53.7% to 73% in contrast to the enrolment of non-Bumiputra students which had declined from 46.3% to 27% (Lim, 1986; 387). Higher education in Malaysia is considered a ready passport for entry into the elite society and therefore the increase in opportunities for the Malays has meant the possibility of more Malays entering into the professional, commercial and industrial world. However, the truth is that only certain privileged Malays gained from the increase in students' placing. Based on a study on students with government scholarships reported by Muzaffar, a student from a rich Malay family has 21 chances of getting a government scholarship compared to just one chance for a student from a poor Malay family (Muzaffar, 1989; 77). A student from a rich Chinese family has 13 chances of getting a government scholarship compared to one chance for someone from a poor Chinese household (Muzaffar, 1989; 85). According to a 1983 study, only 14.2% of university scholarships awarded to Malays went to poor Malay households (Muzaffar, 1989; 80). This should be food for thought for the Malaysian politicians and citizens who are playing communal politics without realising what the consequences are to the nation. They fight for a quota system without realising that it is

benefitting only the elites. The poor Malays do not benefit from the quota system of allocating scholarships in tertiary education although in theory, it is meant for them. Neither do the poor Chinese students. In fact, ethnic quotas in scholarships do not reveal the inequalities and injustice in Government policies for Malays and other Bumiputras (Muzaffar, 1989; 80). As Muzaffar argued, "This is then one of the terrible injustices perpetrated by ethnic quotas, ethnic percentages and most ethnic-based programmes. They tend to hide the truth - the truth about who really wins and who really loses within a particular community. It is mainly for this reason that we have always regarded the ethnic approach in economic planning as unjust to the poor and the powerless, the deprived and the disadvantaged" (Muzaffar, 1989; 81). Thus, a quota system when abused will generate inequality in income distribution and promote the welfare of the elites. When the politicians and citizens of Malaysia fight for the quotas for their communities to be increased, they should think again as asking for better quotas may not be the solution in Malaysia since the reality of poverty and deprivation confronting all the ethnic groups have been ignored. In fact, the quota system will generate ill-feelings among the different ethnic groups instead of integrating them as some deserving people will be left out in the system.

Malaysians have laid too much emphasis on inter-ethnic income inequality when in fact this accounted for only 10% of the overall inequality. Some 90% of the inequality has been due to large variations in income within each ethnic

group (Muzaffar, 1989; 77). The non-Chinese community has put too much emphasis on the idea that the Chinese community holds a lot of economic power. Statistics has shown that those who hold the economic power constitute only a small group. In 1957/8, the top 25% of Chinese households received 65.2% of income within the community. By 1973, the top 25% received 67.4% of income. On the other hand, the bottom 40% in 1957/8, received 18.1% of income while in 1973, it received only 15.9% of income within the community (Muzaffar, 1989; 178).

The ownership of corporate assets is also highly skewed within both the Chinese and Indian communities. Although a large proportion of the top 797 stock-owners in 1983 were Chinese, only 1% of these owners accounted for 32.23% of the number of shares, whereas the bottom 50% accounted for only 1.92% (Muzaffar, 1989; 84). This unequal distribution of wealth will even be worse with the coalition parties, i.e. UMNO, the Malaysian Chinese Association and the Malaysian Indian Congress, establishing their own companies openly (which will be discussed below).

The above data shows that the problem in Malaysia is not one of inter-ethnic economic disparity, but one of intra-ethnic economic disparity. This fact is supported by studies done by academics like Jomo (1983) and Mehmet (1986). In the absence of more definitive indicators, they compared the mean and median incomes of the different ethnic groups in Peninsula Malaysia between 1970 and 1979 and found that the ratios increased over the years with the exception of the Indian community (see Appendix 4.1 of this chapter).

This indicated that the upper income group had more and more income while the lower income group might have seen their income stagnate or diminish.

With the way the New Economic Policy has been mismanaged, there will be even greater concentration of wealth in the hands of a few. For example, the comparative allocations of the Second (1971-1975), Third (1976-1980) and Fourth (1981-1985) Malaysia Plans indicated bias towards the Malay rich in contrast to the Malay poor. "In the three plans, M\$9,319 mil. was allocated for eradication of poverty programmes, which affected some 50% of households in Peninsula Malaysia, while a total of M\$4,397 mil. was allocated in the same period for restructuring which would benefit some 5% of the Malays to become instant 'millionaires' or the 'instant rich'" (Lim, 1986; 381). Moreover, the manipulation of the problem by politicians and people with vested interests into a racial problem, even greater disunity will generate among the different ethnic groups. The objectives of the New Economic Policy have been defeated. National unity will not be achieved with the present policies. The different ethnic groups in Malaysia will still be segregated and suspicious of each other. Relative deprivation will still be felt by all ethnic groups because of the quota system. Muzaffar pointed out that the New Economic Policy had been misinterpreted and abused as "a passport to accumulate wealth and to be instant millionaires" (Aliran, July/August 1986). Thus, the New Economic Policy had unintentionally become a 'partner' in these scandals through abuse and misinterpretation. The New

Straits Times, although owned by UMNO through Fleet Holdings, actually accused those involved in the BMF scandal of betraying national aspirations and particularly those of Bumiputras. It also remarked that, "It is perhaps a measure of the success of the New Economic Policy itself that some Bumiputras have become adept financial crooks comparable with the best in the world" (FEER, 17/11/1983). The newspapers asked whether the New Economic Policy had been intended only to make a few Bumiputras rich and provided them additional opportunities for getting richer by fair means or foul. Ethnic or communal politics gives corrupt officials ample opportunities to accumulate wealth both legitimately and illegitimately. For other politicians, communal politics helps them to gain votes without them realising the inherent dangers in this type of politics. Most of the ordinary citizens of Malaysia are brainwashed into believing that their only survival in a multi-ethnic society in Malaysia is to fight for their own communities. They are so blinded by this ideology that they do not realise that cunning politicians are using this for their own ends, for example, if any politician brings out a racial issue, they will support him or her without any hesitation as to whether the issue is valid. Any politician who defends the rights of his or her community is considered a good politician. The real problem in the country is intra-ethnic income disparity. A high percentage of poverty looms in every ethnic group and an ethnic solution is not needed to help this group of poverty stricken people. Ethnic policies are not needed to improve the standard of living of these

people. These people need better wages, employment opportunities and working conditions, proper housing, education and health services, which are the basic rights of every citizens in Malaysia. Every poor person deserves to be helped regardless of his or her race as was the original objective of the New Economic Policy. As has been shown so far, when economic policies in Malaysia are ethnic based, they are prone to political manipulation by politicians who are interested in acquisition and power. These politicians have no interest in trying to integrate the people of Malaysia or help the poverty-stricken. If the original aim of the New Economic Policy was to be carried out in a just manner and without any ethnic connotation, i.e. eradication of poverty regardless of race, national unity would definitely be achieved.

#### **2.1.2. New Economic Policy and public corporations**

Under Malaysia's New Economic Policy, a large number of public bodies and corporations set up to promote Bumiputras' participation in the economy, which Mehmet termed "trusteeship", legitimised the growth of a large bureaucracy within a short period of time (Mehmet, 1986; 9). At the end of December 1974 (four years after the implementation of the New Economic Policy), there were 45 public enterprises owned by the federal Government in addition to 37 state-owned public enterprises. By the end of the 1970s, there were 91 federal public enterprises and 56 state statutory bodies (Mehmet, 1986; 11). In 1987, Sieh reported that there existed more than 900 Government companies and statutory

organisations in various activities and operations (Sieh, 1987; 17). Sieh also said the Government had provided loans worth M\$2.5 bil. to Government-owned companies and M\$14 bil. to statutory organisations. The Government was also guarantor for loans amounting to M\$12 bil. taken out by such corporations and organisations (Sieh, 1987; 17). Means pointed out that these public bodies were managed mainly by unsuitably qualified people;

"Most of the officers of these Bumiputra bodies were young Malay graduates often with degrees in Malay Studies, Islamic Studies or Arts subjects. Almost none of these officials had any previous experience of financial management of funds involving their own business or personal assets. Instead, they were made financial managers of large sums of institutional money provided from public revenues and were instructed to meet certain policy objectives while also maximising profits. For the banking and savings institutions, large sums of money also came from private savings and investments, often involving the meagre private savings of Malay peasants through the savings society, Amanah Saham Nasional, that invested its funds through Bank Bumiputra. In any case, the total money transactions for these agencies were enormous and the management style of those responsible appeared to throw caution to the winds and proceed with an air of unreality in their search for high-profit ventures and their lack of concern for potential risks or the prospect of default on loans and investments" (Means, 1991; 120).

Moreover, the lack of control over these public bodies by the Government and inadequate accountability on the part of these trustees had encouraged abuse of the system as Mehmet put it, "The trustees have taken advantage of their privileged status, access to information and power over the decision-making process" (Mehmet, 1986; 124). As for the BMF case, the problem was not because of inexperienced and unqualified management members. It is more because of the latter reason i.e. lack of control by the authority and



inadequate accountability on the part of the trustees.

Moreover, if these corporations are not profitable, the Government will keep pumping money into them. The justification is that it is necessary in order to achieve the equity goals of the New Economic Policy. The Prime Minister himself had personally assessed information collected under the Prime Minister's Department of these state ventures and found many state companies suffered heavy losses and mismanagement leading to their closure (Halim, 1990; 77). The Deputy Finance Minister said at least half of the 1,000 odd non-financial public enterprises had been identified to be sold or revamped. He also said that half of those identified would have to be wound up if there were no takers to turn them round (Halim, 1990; 77). These corporations have opened up vast opportunities to make money illegally. Perhaps this is the scheme of some unscrupulous politicians. By employing these unqualified people, the Government would firstly, please the Malay community as they were now being given positions with power and secondly, the unqualified people would not be able to question any complex fraud or deception as they were not in a position to do so with their limited knowledge.

The New Economic Policy could be seen to be helping only the rich or the comfortably well-off, both legitimately and illegitimately. The BMF scandal had shown how a bank which was set up to help the Malays to improve their economic position in keeping with the objectives of the New Economic Policy was actually swindled by the politicians and administrators who were selected by the people to help them.

As Chung commented, "The list of people named in the report (of the Committee of Enquiry) read like a who's who in Malaysia" (Chung, 1987; 35). The money of the poor Malays had been taken by the well-to-do to acquire more wealth. When I interviewed Ahmad Noordin, the then Auditor-General leading the Committee of Enquiry in the BMF case, and Chandra Muzaffar, the then leader of Aliran, they said the best reason they could give as to why the well-to-do defrauded the poor was greed. To all Malaysians, BBMB, as a Government-owned bank, should have set an example of excellent leadership in banking and financial ethics for other banks and financial institutions to follow. It was a let down that the Government-managed bank was not infallible after all.

The victims of the major financial scandals with political involvement in Malaysia are definitely the poor. It deprived them of basic amenities in their houses such as piped water, electricity, schools and clinics which some still do not have. The M\$2.5 bil. that was lost through the BMF case could have been used for the following:

1. Start off 100 universities based on the M\$27 mil. grant to the International Islamic University;
2. Build 125,000 low-cost housing units at M\$20,000 per unit;
3. Develop 150,000 hectares of land to settle at least 30,000 settlers.

(Lim, 1986; 292)

The above discussion has shown how ethnic policies,

implemented in the name of the New Economic Policy, have actually benefited only a small group of elites. This group, no doubt, will be only too happy to keep on adopting communal policies for their own advantage. This will be the discussion for the following section.

### **2.1.3. Communal politics**

Communal politics has been practised in Malaysia ever since it was formed in 1963. As explained in chapter one, Malaysia consists of three dominant ethnic groups; the Malays and the aborigines who are the Bumiputras (the indigenous people), the Chinese and the Indians. Although the Bumiputras are the majority, they were economically lagging behind the Chinese when Malaysia was formed. This created a lot of tension and distrust among the Bumiputras and the Chinese. Communal issues are highly sensitive because of the distrust among the different ethnic groups. Policies are scrutinised carefully by everyone so that no ethnic group will have an advantage over the others. This form of communal politics has generated the bad habit of reducing almost every social problem into an ethnic problem. The BMF case was one example. It was seen as a Malay problem although the culprits were from the Chinese ethnic group, too. In fact the Prime Minister himself was guilty of using communal politics for the BMF case. In October 1984, he made a statement accusing those who demanded an open inquiry into the BMF scandal as motivated by the desire to destroy the Malay political leadership (see sec.1.2.8 of this chapter). As the leader of the opposition party, the Democratic Action

Party, replied to the Prime Minister's statement, "If there is anyone who is trying to destroy the Malay political leadership, then it is those who are responsible for the "heinous crime" of the M\$2.5 bil. BMF loans scandal. Unfortunately, the government seems to have lost its moral sense of right and wrong, regarding the critics of the BMF loans scandal as greater enemies of the state than the perpetrators of the BMF loans scandal" (Lim, 1986; 350). The culprits of the BMF case were Malays as well as non-Malays. Those who demanded a Royal Commission were from the Malay and non-Malay communities. The BMF scandal was definitely not a racial problem. The reason why communal politics is favoured by corrupt politicians is that when a problem is considered as an ethnic one, it will not be discussed in depth and in public by the particular ethnic group because it is "washing dirty linen in public", "disloyal to one's race" or even "anti-establishment" as the dignity of the race is at stake. Shaming has always been used by politicians to deter the public from speaking against politicians from their own ethnic groups. It is also used to deter open discussions on issues which would be detrimental to the image of the different ethnic groups. As Braithwaite said in his book, "Crime, Shame and Reintegration", "Shaming is a dangerous game. Done oppressively, it can be used for thought control and stultification of human diversity. Not done much at all, it unleashes a war of all against all, the maximally repressive state, and tolerance of a situation where some citizens trample on the rights of others" (Braithwaite, 1989; 12). He also said, "Shaming can become

the principal weapon of the tyranny of the majority [in the Malaysian case, it is the Government and politicians]...When shaming is used to oppress a minority who think the standards are wrong, however, and where those standards have nothing to do with guaranteeing the freedom of all, the majority can be truly tyrannical (Braithwaite, 1989; 158).

When members of one ethnic group have problems, the other ethnic groups would usually be diplomatic about the problems so as not to create ill-feelings. The person who "washes dirty linen", especially when it involves a corrupt official or politician, will not be tolerated. The over-concern for the image of the ethnic group has clouded the rational judgement of the people. As Chandra Muzaffar put it, "Surely, the culprit is not the person who washes the dirty linen; it is he who dirties the linen in the first instance" (Muzaffar, 1989; 126). A corrupt official or politician is only too happy to exploit and encourage this attitude as it protects his or her vested interests from being exposed. A paper titled, "Corruption and the Malaysian situation" presented at the Aliran seminar in Kuala Lumpur on 2 November 1980 by Azmi Khalid and Harun Rasip, made the following observation, "Ethnic relationships in our ethnic-conscious society have only served to exacerbate and complicate the problem of corruption, especially when emotive appeals help to justify acts of corruption in racial terms. The inter-ethnic competition for power and influence has seen to it that even religious values can be clouded by racial prejudices. It has been said that it is alright to indulge in corruption for the benefit of one's own

community". Thus, communal or ethnic politics prevents the truth from being revealed. Social problems like corruption and fraud fail to get the attention they deserve as they are not examined critically. Without critical judgement, the development of a thinking society is also prevented.

#### **2.1.4. The mixing of politics and business**

Another distinguishing feature of the political system in Malaysia is that politics and business are mixed together. Political parties in Malaysia, especially the ruling coalition party, Barisan Nasional, set up companies which participate in a variety of economic ventures. The major companies of UMNO are Hatibudi and the Fleet Group; for the Malaysian Chinese Association, it is Multi-Purpose Holdings; and for the Malaysian Indian Congress, it is Maika Holdings. These companies have been around for some years. Conflict of interest is bound to take place when politics is mixed with business, even if the business deals are done legally and in a fair manner. For example, in the late 1980s, the Barisan Nasional Government awarded the North-South Highway project to a virtually bankrupt company, United Engineers Malaysia, which was bought by Hatibudi, an investment arm of UMNO, just before the award. The conflict of interest was so obvious. UMNO leaders were definitely involved in the decision-making process and for such a huge project to be awarded to a company owned by their own political party was bound to generate suspicions and ill-feelings. Moreover, by getting involved in business, political parties would develop ties and relationships

within the business network. When political parties or the individual politicians are involved in businesses, they have to deal with other private business people. This will expose the political parties to the temptation of "money politics" which Loh and Kahn defined as covering "a range of practices whereby the benefits of State economic sponsorship and protection are channelled to individuals, groups and private companies associated with the ruling political parties, in particular UMNO" (Kahn & Loh, 1992; 2). I would define "money politics" as money used to 'buy' supporters and it is usually given by big businessmen or rich people with vested interests to politicians for their political career in return for securing favours, especially business favours. Whatever the definition is, it is clear that bribery and corruption are involved. The way the money is obtained is even worse than the political parties accepting donations openly from companies. The money is needed because political campaigns in Malaysia are very expensive. The following example will give an idea of how expensive it is to be a politician in Malaysia. When the then Vice-Presidents of UMNO, Musa Hitam and Tengku Razaleigh vied for the post of Deputy Prime Minister in 1981, each took blocks of rooms at leading hotels in Kuala Lumpur for the last few days before the party assembly and filled them with state delegates and supporters, all expenses paid. Musa won, but had to go through the same contest again in 1984. When he resigned as Deputy Prime Minister in 1986, he told the Prime Minister he had not wanted to contest again in 1984 because he "could not afford it" (FEER, 2/4/1987). Aspiring politicians with

no money of their own are forced to play the game by the same rules when they compete with their opponents. If he has no money, he must have friends or a 'godfather' who does. It is not surprising that politicians will be tempted to accept 'donations' for their career in whatever ways they are given. Once they win the election, they will be in a position to repay the favours and make a lot of money themselves. It was reported by Karim that some of the funds missing from the BMF scandal could have ended up with UMNO; "There was also widespread rumours that profits from BMF loans were to be syphoned back for the UMNO headquarters building fund has at least some basis in fact. After all, Hashim Shamsuddin was the then Treasurer of the UMNO headquarters building fund committee, of which Tengku Razaleigh was Chairman" (Karim, 1989; 106). In the micro section of this chapter, one of the reasons given by one of my interviewees as to why the Prime Minister did not take any action against Tengku Razaleigh was because George Tan had given donations to UMNO (see sec.1.2.5).

The Economist on 6 November 1993 said that "money politics" has become rampant in Malaysia. The article ended with a quote from Tengku Razaleigh, the ex-Finance Minister of Malaysia who is now the leader of the opposition party, Semangat '46, "Everything is on offer there (UMNO) - money, women, shares, company directorships. It's corrupt to the core" (The Economists, 6/11/1993).

Many politicians in Malaysia hold the roles of entrepreneurs in the course of their political career. In being entrepreneurs as well as taking part in the decision-



making process of the country, the opportunities, both legal and illegal, which are opened to the politicians are extensive. For example, the then Finance Minister, Daim Zainuddin, had acquired control of the country's third largest bank, the United Malayan Banking Corporation, to the detriment of the state-owned investment corporation, Pernas. An article in the "Asian Wall Street Journal" on 30 April 1986 showed the investment companies of the then Finance Minister, Daim Zainuddin, and his family completed the acquisition of a co-dominant stake in the United Malayan Banking Corporation months after he held the post (Aliran, 1988; 224). It also showed how in mid 1985, the "companies quietly took outright control of the United Malayan Banking Corporation in a move that never has been publicly disclosed". The transaction suggested that the Minister had abused his official position. There was also evidence that he used his authority to make changes to Bank Negara's policies and banking laws in order to protect his family's takeover of the United Malayan Banking Corporation. Bank Negara announced a new policy prohibiting individuals or family-owned companies from owning more than 10% of the equity in a local bank only after the takeover, with Daim's companies becoming the major shareholder with 50.38% (Aliran, 1988; 226). The takeover by Daim's companies resulted in Pernas, a State-owned corporation, losing its co-controlling interest in the United Malayan Banking Corporation. The takeover generated a lot of criticism as the interest of a State-owned corporation had been sacrificed for an individual.

However, in October 1986, Aliran reported that Pernas had decided to acquire an 80% stake in the United Malayan Banking Corporation which was 50% more than what its original holding (Aliran; 1988; 248). Pernas did declare much earlier on in June 1976 that one of its objectives was to have a commercial bank in its portfolio when it first acquired a 30% stake in the United Malayan Banking Corporation. If that was its objective, the question was why Pernas did not buy the United Malayan Banking Corporation shares when they were up for sale at a lower price in mid 1985. Instead the Finance Minister's family companies bought them. Was it possible that Pernas was helping to bale out the family holding companies of the Finance Minister which were reported to be facing financial problems? If that was the reason, then there was a clear case of conflict of interest and abuse of power.

With the introduction of the New Economic Policy where the Government tried to upgrade the living standard of the Bumiputras as well as to eradicate poverty, funds allocated for projects created many opportunities for politicians and their cliques to make money. These opportunities benefit not only the Malays and other Bumiputras, but also non-Bumiputras, especially the politicians and the well-connected, in an indirect manner. As Ahmad Noordin, the leader of the Committee of Enquiry into the BMF case said during my interview with him, "Politics in Malaysia is the art of possible". The BMF case is one good example where there was collaboration between Malays and non-Malays to defraud the bank.

With the Malaysian Government presently undertaking the strategy of privatisation of public enterprises, there is a greater need to be vigilant over Government actions. The privatisation policy is certainly going to favour the rich and powerful. Mehmet had already warned that the new entrepreneurs of the privatised enterprises were selected by ruling elites preferentially, first and foremost on political grounds. For example, the award of a license to launch a commercial television network, TV3, in August 1983, was given to the Fleet Group, the chief investment arm of UMNO. Its parent company, Fleet Holdings, was headed by the then new Minister of Finance who was a close friend of the Prime Minister (Mehmet, 1986; 147). It is unfortunate Malaysia does not seem to have any rule about conflict of interest. The result of privatisation is that the rich will get richer not through merit or fair competition, but by patronage and collusion with the Government. Public resources are channelled into projects which are said to be for wealth restructuring and eradication of poverty. However, many of these projects have been abused for self-enrichment which led to the widening of inequalities between as well as within ethnic groups.

Finally, it was an even bigger disappointment when Aliran reported on 30 June 1986 that the then Attorney-General, Abu Talib Othman, was made chairman of the Malaysian Building Society, a prominent financial institution controlled by the Government (Aliran, 1988; 181). Has the Attorney-General become an active member of the commercial world, too? Was that why he was so reluctant

to handle the BMF case when it was his duty to do so because those people involved were politicians and business colleagues of his? Conflict of interest would no doubt occur and it is highly improper of the highest legal officer in the country to be involved in the commercial enterprise. Moreover, he should devote his time solely to his job which was a full time highly important one and to the Malaysian people instead of dividing his time for commercial purposes.

The above illustrations seek to show that there are vast opportunities to make money from the New Economic Policy by politicians and the communal politics practised in Malaysia can be used to help them cover-up their illegal dealings. Section 2.2 will discuss how political leaders can make use of certain 'tools' like legislations to cover-up their corrupt deals.

## **2.2. 'Tools' of the Government**

### **2.2.1. Deflecting the attention of the public**

The ruling political leaders of Malaysia have many tools to help them carry out their plans and policies. These tools also prove to be useful to politicians with vested interest. When the BMF case made headlines in 1983, the Government tried to deflect the attention of the public, for the simple reason that a few politicians were involved, by playing up the constitutional crisis over the powers of the Malay Rulers as explained in section 1 of chapter 3. The Government proposed to take away the privileges and immunities enjoyed by the Malaysian royal families. This

issue obviously would attract a lot of attention from the public as the tradition of the Malay society is to give unquestioning allegiance to the monarch. Thus, the attention of the public was divided between the BMF case and the Malay Rulers crisis.

In early 1993, when Lorrain Osman was extradited to Hong Kong to stand trial for the BMF scandal, after being on remand at Pentonville and Brixton prisons in England for seven years, the issue of the privileges and immunities of the Malay royal families was brought up again. Is this coincidental or planned? The way the Government tried to cover-up the BMF case, by not taking any action, by refusing to establish a Royal Commission and refusing to publish the findings of the Committee of Enquiry, points to the fact that there might have been a conspiracy to deflect the attention of the public from the scandal by using the constitutional crisis issue (see sec.1, chap.3). The abuse of privileges and immunities by members of the royal families took priority in the local mass media while the trial of Lorrain Osman received minimum coverage. The local newspapers and other mass media cannot be blamed fully for the minimum coverage of the BMF case although M\$2.5 bil. is still missing after ten years because dissenting news can be censored by the Government. Moreover, newspapers like Utusan Malaysia, Berita Harian, the New Straits Times and the television station, TV3, are owned by UMNO (Muzaffar, 1989; 45) and Radio and Television Malaysia is owned by the Government.

### **2.2.2. Publications Act and Printing Press Act**

In early December 1987, the already restrictive Publications Act was further amended. The new Act gave the Minister of Home Affairs the right to determine what sort of news would "alarm public opinion". The Act also prohibited the Judiciary from reviewing Government decisions on publication and printing licenses (Muzaffar, 1989; 73).

Malaysia also has the Printing Press Act which allows the Government to revoke the licenses of printing press at any time (Muzaffar, 1989; 515). The Publications Act and the Printing Press Act, no doubt, will deter the publication of any dissenting view; one of these is the financial scandals of high ranking politicians.

### **2.2.3. Official Secrets Act**

Besides the Printing Press Act and the Publications Act, there is also the Official Secrets Act which prevents vital information from getting to the public. In 1983, amendments to the Official Secrets Act (OSA) 1972 were introduced. These amendments coincided with the publication of detailed analysis of the BMF scandal by some regional journals like the "Asian Wall Street Journal" and the "Far Eastern Economic Review". The Act was amended again in 1986 after more financial scandals were unearthed by regional publications. The Act replaced fines for offenders with a mandatory jail term ranging from one year to 14 years as penalties for those leaking official secrets. The "official secret" could be "any document specified in the Schedule and any information and material relating thereto and includes

in any official document, information and material as may be classified as 'Top Secret', 'Secret', 'Confidential' or 'Restricted', as the case may be, by a Minister, the Chief Minister of a State or such public officer appointed under section 2B". Section 2A goes on to say that, "The Minister may, from time to time, by order, published in the Gazette, add to, delete from or amend any provisions of the Schedule hereto". Thus, as Muzaffar pointed out, the classification could take place even after the data of that document had appeared in some magazine or newspaper (Muzaffar, 1989; 132). What is classified as "official secrets" is vague and extensive. People, especially civil servants, are so unsure of what information comes under the OSA that they tend to be over cautious and a lot of useful information has been withheld from the public. This was what I experienced when I tried to get data of employee fraud from the Malaysian Police Headquarters. The officer I was recommended to speak to refused to help me, going so far as to tell me not to let anyone know he had spoken to me. That delayed my field work as I had to obtain permission from the head of the Commercial Crime Department to have certain data released to me. The data that I needed were not under the OSA, but the officer I saw was over cautious. In a way, I could understand his predicament because section 7A of the OSA states that any person caught supplying information classified as "official secrets" to another person without reporting to a police officer of the rank of Inspector or above or the head of the department if he or she is a civil servant, could be guilty of an offence punishable with

imprisonment for a term not less than one year and not exceeding five years. Usually information that will give a bad image to the Government and its policies is used as a yardstick by the public as to what is an official secret.

Scandals like the BMF are brought to the attention of the public largely through investigative journalism. Investigative journalism is only possible if the freedom to investigate is there. The OSA will deny journalists that freedom. Some journalists had already been put behind bars under the OSA. For example, James Clad, the "Far Eastern Economic Review" Kuala Lumpur bureau Chief and Sabry Sharif of the New Straits Times were arrested under the OSA in 1985. Sabry wrote an article on the Royal Malaysian Air Force's proposal to purchase four AWACS aircraft, based upon a purportedly secret document entitled "The RMAF Force Structure Study 1984" (Aliran, 1988; 103-104). The Government can now dictate what is news to the public by screening out opposition viewpoints and promoting the image of national leaders in its own media, Radio Television Malaysia and, to a great extent, in the 'independent' press.

The amendments of the OSA in 1986 raised a lot of questions in the minds of the public. Why was it introduced at the time when financial scandals were rampant? What were the purposes of these changes in the Act? The majority of the public perceived that the wide coverage of the BMF scandal by the mass media was one of the main reasons for the amendments to the OSA. The amendments were attempts to cover-up any financial scandals which might tarnish the image of the Government and the upper class.



Another reason that was given was that the Government was trying to take away some of the powers of the legal system. The Minister's certification of what is an "official secret" cannot be challenged in any Court of Law. Although the Judiciary would be unable to question the classification, it would still have to impose the mandatory jail term. The authority of the Judiciary has been weakened in this way and there is a fear that the trend would continue to take away the powers of the legal system.

When the public protested against the amendments of the OSA, certain politicians turned the protest into an ethnic issue. The Utusan Malaysia reported that on 26 November 1986, the Barisan Nasional member of Parliament for Pulai, Mohamed Rahmat, cautioned the Malays to be wary of attempts by certain people to exploit the OSA issue with the aim of creating doubts about the "Malay Government". He also said, "considering that the leadership of Government is Malay and the strength of the Government is derived from the Malays, any opposition to the OSA amendments can be viewed as a manoeuvre to challenge the Malay leadership and the Malays themselves" (Aliran, 1988; 133). The issue of the OSA is certainly not an ethnic issue, but there were unscrupulous politicians who would use it to their advantage, perhaps to gain more popularity with their people. The OSA affects both Malays and non-Malays. Protest against the OSA was from both the Malays and non-Malays. The OSA affects the people's right to know the truth, the public accountability of the Government, the increasing threat to the legal system and the increasing power of the Government. It has nothing to do

with ethnicity.

#### **2.2.4. Sedition Act**

Another Act that was amended was the Sedition Act 1948. It was amended in 1971 to protect the publication of material on four sensitive issues i.e. the sovereignty of the Malay Sultans, the "special rights" of the Malays, conditions of citizenship of the non-Malays and the position of Malay as the national language. Amendment to the Act on these sensitive issues was extended to cover members of Parliament and state legislatures, who previously had enjoyed special immunity from legal injunctions, for statements made during legislative sessions. This amendment was used to stop certain members of the opposition parties, most notably Lim Kit Siang and Fan Yew Teng of the Democratic Action Party from questioning ethnic policies. Under the Sedition Act, sedition can be committed by inciting disaffection against any ruler or government, inciting unlawful changes to any lawful matter, inciting contempt for the administration of justice, raising discontent among the people, promoting ill-will between races and classes and questioning any of the sensitive issues (Lent, 1984; 455).

#### **2.2.5. Internal Security Act and the creation of racial tension**

Another powerful tool of the Government to prevent dissident views is the infamous Internal Security Act (ISA) 1960. The ISA allows the State to detain people without

trial for any length of time. The ISA could give the Government unlimited powers to rule by decree without any restraint imposed on these powers. The amendment to Article 150 empowered the King to make declarations of "emergency even before the actual occurrence of an event if he was satisfied there was imminent danger of it taking place". Police and security forces are given wide ranging powers of search and arrest, based on hearsay and suspicion and the detention of persons in the first 60 days for investigation. This can be followed by a confirmed two-year detention, based on allegations extracted from investigations without any trial in court and further extension of detention every two years at the discretion of the Minister of Home Affairs, on the recommendation of the Advisory Board and the Special Branch. The original aim of the Act was to check communist subversion during the colonial period. But, over the years, it has also been employed to detain non-communist opponents of the government. The surveillance is now not only on the political opponents, but also on public interest groups, professional associations, trade unions, academics and vocal Government critics. This Act has instilled fears among the public to voice out their opinions and dissatisfactions.

According to Amnesty International, "The Malaysian political system has been characterised by a marked inflexibility and intolerance towards political parties and groupings who have tried to organise themselves on a non-communal basis, or who have threatened the political monopoly of UMNO, the Malaysian Chinese Association or the Malaysian Indian Congress within their respective

communities. Although there are some very small non-communal parties within the National Front (Barisan Nasional) Government, these are of almost no significance in the political life of the country" (Lent, 1984; 448).

In the 1960s, the multi-racial, left-wing Labour Party was hard hit by arrests of hundreds of its members, some of whom (at least 22) were still in detention in the late 1970s. In 1969, the Labour Party boycotted the elections in protest against the arrest and detention of its members. By the early 1970s, the party ceased to exist, partly as a result of the arrests it suffered. In the 1970s, leading members of Partai Sosialis Rakyat Malaya (Malaya People's Socialist Party) were detained under the ISA, among them, two state assemblymen were arrested after boycotting a visit to the state of Pahang by the then Prime Minister, Tun Razak. One served nearly four years in detention and the other, nine months. In November 1974, Syed Husin Ali, a University of Malaya anthropologist, was detained, followed in November 1976, by the Partai Sosialis Rakyat Malaya's chairman, Kassim Ahmad and the Muslim youth leader, Anwar Ibrahim. Local leaders of the Muslim opposition party, Partai Islam SeMalaysia, were detained after peasant demonstrations in Kedah in 1980 and leaders of the Airlines Employees Union were arrested after industrial action taken by workers of the Malaysian Airline System in 1978-79. The Secretary-General of the opposition party (Democratic Action Party), Lim Kit Siang and members of Parliament, Chan Kok Kit and Chian Heng Kai, have been arrested under the ISA. Even members of the Government were not exempted as two

deputy ministers, Abdullah Ahmad and Abdullah Majid, together with the editor of the New Straits Times, Samad Ismail, discovered when they found themselves on the wrong side in a factional struggle in 1976 (Crouch, 1992; 24).

Between 1960 and 1981, more than 3,000 people were detained under the ISA although most were eventually released. In the late 1970s, there were some 900 detainees, but the number fell to 586 when Mahathir Mohamad became Prime Minister in 1981. Under Mahathir the number fell rapidly to only 40 at the end of 1986 (Crouch, 1992; 23). However, on 27 October 1987, the ISA was used extensively again by the Government. By mid November, at least 106 leaders and members of political parties, public interest groups, academics, cultural organizations, trade unions, environmental group as well as religious associations were behind bars. The Government's justification for the mass arrests was that those detained were creating ethnic tensions which could jeopardise national security and ethnic harmony. At the same time, three popular newspapers, the Star, Watan and Sin Chew Jit Poh were suspended by the Minister of Home Affairs who was also the Prime Minister of Malaysia. Their publishing licenses were suspended on 28 October 1987 for almost five months (Muzaffar, 1989; 178). The three newspapers were suspended because they were playing up ethnic issues. However, some members of the ruling party, who played a major role in creating the racial tension, were not detained.

How did this ethnic tension happen? There were a few issues which were interpreted as communal issues causing the

tension. Among them were:

1. the Melaka Government introduced a development plan for the Chinese burial ground on Bukit Cina or Chinese Hills. This was taken by the Chinese community as a threat to its culture and heritage;
2. whether the Government should rescue the Deposit-Taking Co-operatives (which will be discussed in Chapter 5) which went broke and where many low income Chinese invested their money;
3. the placing of non-Mandarin speaking Chinese administrators in Chinese primary schools was seen as an attempt to annihilate the Chinese language and Chinese education. Moreover, if this emplacement took place, it was feared that in future, Malay administrators might be selected instead of Chinese ones;
4. the reported Christianisation of the Malays who were Muslims by missionary activities. There was no proof of this allegation, but it did create an uproar among the Malays;
5. Islamic deviationist groups and Parti Islam SeMalaysia, the opposition party, had established a clandestine organisation called Jundullah which meant Allah's army on 29 August 1987. Its purpose was "to set up an Islamic administration in Malaysia through militant action. It was also to be the saviour of the Muslims should racial riots break out" (Muzaffar, 1989; 172).
6. the Indians were unhappy over the change in the

composition of courses offered in their mother tongue, Tamil, at the local University;

7. the existence of a Marxist or Communist group which propagated anti-Government views. There was no proof as to the existence of this group.

These issues created a lot of tension among the different ethnic groups in the country. Gatherings by different ethnic groups were held, without any restraint from the police, to air communal sentiments. The situation became very tense when the coalition parties in power, i.e. the United Malays National Organisation (UMNO), the Malaysian Chinese Association and the Malaysian Indian Congress, began to attack each other openly regarding these issues. UMNO and its youth wing organised a large rally where banners and posters, which had derogatory remarks aimed at a particular race and a particular leader, were used, leading to the eventual removal of the title of 'Datuk' (equivalent to the British title of 'Sir') from a Chinese party leader by the Sultan of Selangor. All these incidents escalated the tensions which were already simmering and the general public feared that another May 13 racial riot (see chapter 1) might break out. The Government leaders must have known that such gatherings would only aggravate the already tense situation and yet, they did not do anything to stop them. They did not try to calm down the situation, allay the fears of the people or even ban racial gatherings. As Muzaffar pointed out, "perhaps certain individuals wanted the situation to develop in a certain

direction. It gave them the excuse to arrest a whole array of individuals - which is exactly what happened on Oct 27" (Muzaffar, 1989; 213). The main reason given by Muzaffar why these individuals wanted racial tension to occur was to deflect the attention of the public from corruption scandals among the high ranking politicians. The use of the ISA was to instill fear among Malaysian citizens so that they would not question and pry into the actions of these politicians. Muzaffar's argument cannot be dismissed lightly. If the whole issue is analyzed carefully and critically, there is plausibility in the statement he made.

Firstly, most major financial scandals in Malaysia were exposed or pursued by journalists, political opponents, public interest groups, academics and social critics. The local newspapers, too, were playing their role by keeping the public informed of major scandals in Malaysia and some even carried out their own investigations and analysis of these scandals. The coverage of the BMF case in the early 1980s would testify to that. As discussed in section 1 of Chapter 3 and section 1.2.8 of this chapter, the Government did not want the public to know of the existence of the scandal. It went to considerable lengths to conceal the truth as high ranking politicians were involved. When the "Asian Wall Street Journal" first published the scandal, the Government still denied that anything was wrong. However, the truth could not always be concealed. The Government finally decided to set up a limited Committee of Enquiry to investigate the case instead of a Royal Commission which the general public called for. When the Committee of Enquiry had



finished its investigation, the Government was still trying to be difficult by not publishing the report so that the general public would know the truth. The Government's actions were really suspicious. Why was it so afraid that the public would know the truth? What was it trying to hide? The simple reason was that prominent public figures were involved in the scandal. The then Finance Minister and Deputy Prime Minister were implicated in the report. That was why the Government took a very authoritarian stand by invoking the Official Secrets Act (OSA). The OSA might not allow vital information from getting to the public, but it could not stop journalists, political opponents, public interest groups, academics and social critics from voicing their discontent. The other alternative would be to use the ISA to frighten these people into keeping their mouth shut or else, lock them up.

Secondly, racial tension could be created by politicians to deflect the truth concerning politicians' involvement in major financial scandals from the public. The events leading to the October 27 clampdown occurred at the same time as major financial scandals involving politicians of the different ethnic groups were rampant, for example, the BMF, Pan-El, Deposit-Taking Cooperatives, United Malayan Banking Corporation, EPF-Makuwasa, Sports Toto, United Engineers and Fleet properties (Muzaffar, 1989; 42). If the racial issues, discussed earlier, which created the racial tension, were to be analyzed, a few discrepancies could be found. How was it that these issues were not discussed at grassroots level first i.e. between representatives of the

different ethnic groups instead of just declaring them publicly when the idea cropped up, for example, the issue relating to the Chinese burial ground? The State authority must have realised that development of the burial ground without consulting the Chinese community was really asking for trouble. It was equivalent to taking over the sacred burial grounds of the Red Indian communities in America. It was a blatantly insensitive thing to do. Perhaps it was done deliberately to create some discontent, but with no actual intention to implement the plan. If that was the case, they certainly did a good job. The Chinese community was extremely upset over the plan as ancestor worship is a very important feature in their culture.

Moreover, accusations made by the Government about the Christianisation of the Malays and the existence of Marxist or Communist groups were groundless. This leads one to think that these issues were created rather than real. Again, the Government did a good job in inciting racial sentiments with these accusations. Was Muzaffar right then in his theory that racial sentiments were played up to deflect issues of financial scandals? The question is whether the Government would have been prepared to risk a racial riot to cover-up financial scandals? I believe the answer is unfortunately yes. Of course not all politicians are corrupt or will play on racial sentiments for vested interests. Unfortunately, there are a few who will and who are powerful enough to do that to save their own skin. They have been cunning enough and manipulative enough to play on the sentiments of the majority of the general public. They will take advantage of

the historical development of the political situation in Malaysia i.e. communal politics and will try to preserve this development for their own interest. As long as these people are around, communal politics will always exist in Malaysia and the different ethnic groups will never be united. The October 27 incident shows clearly the power of ethnic arguments to move the sentiments of the public. The issue could be anything so long as it is communal. The October 27 clampdown also reveals to the public the powerful tool the Government has in the form of the ISA in order to curb dissents. It is so easy for the Government to create ethnic tension and then use the ISA to control the public. As the ex-leader of Aliran, an informal movement for freedom, justice and solidarity, Muzaffar, put it, "If the growth of democratic awareness threatens someone's power, the ethnic argument can be pushed to the forefront to curb all debate and dissent. If some of the malpractice and wrongdoing of the elite are about to be exposed, all that a Machiavellian politician has to do is to engineer an ethnic crisis in order to keep his group in power. If a leader's position is threatened by competing cliques and factions, he can always attempt to consolidate his power by manipulating ethnic apprehensions to his advantage" (Muzaffar, 1989; 159).

Of course, I am not denying the fact that the public have to be blamed, too, for allowing themselves to be manipulated easily by dishonest politicians with the communal issues. Other politicians, who may not be involved in any financial scandals, may still take advantage of the

situation for their political career as they hope they will be seen as their communities' champions and defenders of their rights.

The OSA which was amended in 1983 i.e. after the BMF scandal was uncovered and the implementation of the ISA in 1987 discouraged Malaysian citizens from seeking the truth and justice. In fact, it has instilled fear in the people about discussing "sensitive issues", including political corruption and fraud. Even today, the truth of the BMF case is not known and even more disappointing is that the Malaysian public either do not want to discuss it or else they have forgotten that M\$2.5 bil. of their money is still missing.

The Police Act was also amended in December 1987, i.e. after the October 27 clampdown, which curbed the freedom of assembly as police licenses would now be required for all manner of assemblies.

#### **2.2.6. The Anti-corruption Agency**

One more tool which politicians have to instill fear in somebody is, sadly, the Anti-corruption Agency, an agency with supposedly independent power, set up to control corruption in the country. Its role is similar to that of the Independent Commission Against Corruption (ICAC) of Hong Kong. It can choose to act on complaints, including anonymous ones, made by the public. If a person wants to discredit another person, he or she could inform the Anti-corruption Agency to start an investigation of that person. Whether the person is guilty or not is not the issue. The

purpose is to discredit and intimidate him or her. The misuse of the Anti-corruption Agency is quite blatant as even honest academics who have spoken out have been visited by the Anti-corruption Agency, for example, Syed Hussein Alatas, the ex-Vice Chancellor of University of Malaya. The Anti-corruption Agency does not seem to realise that its power has been misused or does it? Perhaps it is not that independent after all. Perhaps that was why it did not involve itself with the BMF case when the report of the Committee of Enquiry and the article in the "Asian Wall Street Journal" clearly showed certain individuals to be corrupted. As Lim Kit Siang, the leader of the opposition party, the Democratic Action Party, commented, the Anti-corruption Agency had been used as "a shield to protect corruption...in high places" (FEER, 9/9/1993). The effort of the Anti-corruption Agency has clearly been misdirected. It should not just concentrate on the small fish, it should also concentrate on the big ones. As the saying goes, "Big or small, catch them all".

### **3. Conclusion**

In conclusion, political opponents, public interest groups, professional associations, trade unions, academics, vocal Government critics and to a certain extent the Judiciary will not be able to play their role with integrity with the existence of all the above Government tools of repression, especially the OSA and the ISA. There is a joke among the Malaysian academics i.e. "you are free to talk, but once you talk, you are not free any more". The

newspapers will also not be able to publish any dissident views freely as their circulations depend very much on the powers of the Government. The consequence to Malaysian citizens is that truth and justice will not always prevail. Moreover, with the decline in dissident views, the ruling elite will become even more powerful and authoritarian. The ruling elite seems to dictate what the citizens of Malaysia should know. Thus, the Malaysian citizens will never be able to know, in depth, what the Government has done, whether it is right or wrong and whether it is beneficial or destructive to the country. The tools provide a shield for inefficiency, negligence, maladministration, corruption and fraud by politicians and Government officials. Public accountability by the Government in the true sense of the word is lost. Democracy cannot be safeguarded if vital information is kept within the confines of the Government. The truth of the matter is that the Malaysian Government seems to tolerate corruption and fraud in the country. The Government has never seemed to really be concerned with the eradication of corruption and fraud in the country even though the country has lost billions of Malaysian dollars through large financial scandals. One plausible reason is that some of the top Government officials are corrupt and have been defrauding the public. The slogans of "a clean, efficient and trustworthy government" and "leadership by example", adopted by the present ruling party during the 1982 elections, were not practised over the years. The most obvious example is the way the BMF case has been handled. The Government actually tried to prevent the public from

knowing the details of the case. Sadly, the Government was backed by the Attorney-General of Malaysia who could be a business colleagues of these unscrupulous businessmen and politicians (see chapter 3).

The above facts are more than enough to justify the conclusion that there was a cover-up for the BMF case involving high ranking politicians. On 5 March 1992, the "Far Eastern Economic Review" (FEER) reported that Lorrain Osman's counsel, Martin Thomas, claimed in the High Court in London that charges brought against Lorrain Osman were part of a cover-up organised by the Hong Kong, Malaysian and British Governments to deflect attention from those really responsible for the BMF affair. He claimed that documents had been "locked in a safe" and withheld from him and his defence team. One of the document was a minute of meeting held between Chooi Mun Sou (a member of the Committee of Enquiry) with Hong Kong's then financial secretary, John Brembridge. The minute written by Chooi and obtained from the Malaysian Courts stated that Brembridge had said bluntly (which he denied) that, "a cover-up was going on in Malaysia". The document referred to the then Minister of Finance, Tengku Razaleigh. It also mentioned an "intervention to stop the use of documents of BMF in the Lorrain Osman's trials by another Malaysian minister through London" (FEER, 5/3/1992). The fact that Martin Thomas claimed it did not mean he believed it or that it had substance. It should be noted that the defence counsel does not have to believe the truth of the allegations he or she put forward on behalf of his or her client. However, there

is independent evidence to support this allegation. This allegation was supported by "The Lorrain Osman Appeal Committee in Britain" which reported that, at the heights of the BMF scandal, the Malaysian Minister for Foreign Affairs "ask[ed] or demand[ed], that the United Kingdom authorities instruct the Hong Kong authorities to limit the scope of the evidence in the murder trial, and end any investigation of BMF, the subsidiary in Hong Kong" (LOAC, 1992; 12). This fact was found in a letter dated 1 September 1983, written by Ibrahim, the General Manager of BMF, in which an account of a meeting between the United Kingdom High Commissioner in Malaysia and the Malaysian Minister for Foreign Affairs was given (see Appendix 4.2). The Lorrain Osman Appeal Committee also said that the file on BMF was then closed and at the murder trial of Jalil Ibrahim, certain portions of one of the confessions made by the murderer, 24 pages in all, never appeared (LOAC, 1992; 12). Martin Thomas also made the same allegation that 24 pages of statements made by the convicted murderer Mak Foon Than and Jalil's (the murdered BBMB auditor) letters and notes were withheld (FEER, 5/3/1992).

The then Foreign Minister, Ghazali Shafie, had admitted he had in July 1983 given "friendly advice" to the British Government not to use BMF documents which were procured during the investigation of the murder of Jalil Ibrahim, the Assistant General Manager of BMF, for the investigation into the Carrian affair (Lim, 1983; 21).

Why would the Government of the United Kingdom and Hong Kong agree to the request of the Malaysian Government not to release these documents? These documents were 150 telexes



sent between the British, Hong Kong and Malaysian Governments. They were never produced in court because two Ministers, Lord Caithness and Francis Maude, signed the Public Interest Immunity orders whereby these documents could not be circulated outside Parliament without breaching the immunity (Daily Mail, 3/2/1994). The Times also alleged that Douglas Hurd, the Foreign Secretary, also signed the order (The Times, 25/2/1994). This was the first time the British Government had used such certificates to prevent disclosure of Government documents in the case (Financial Times, 5-6/2/1994; The Sunday Times, 13/3/1994). The recent Pergau Dam affair (1994) between the British Government and the Malaysian Government has thrown some light into the case. The history of the Pergau Dam issue began in the early 1980s when the Malaysian Government decided to implement the "Buy British Last" policy after the British Government decided to raise the fees of Malaysian students to the status of overseas fees. Margaret Thatcher, the then Prime Minister of Britain, wanted this policy to end and resume a trading relationship with Malaysia. In September 1988, she went to Malaysia to have a meeting with Mahathir Mohamad, Prime Minister of Malaysia. A memorandum of understanding on £1 bil. of British arms sales was agreed and the "Buy British Last" policy was ended. One of the conditions of the understanding was alleged to be the giving of £234 mil. in aid for the building of the Pergau dam in Malaysia which led to an outcry by the British public, press and opposition parties that aid should not be linked to arms deals (The Times, The Sunday Times, The Independent, the Daily Mail,

February-March, 1994). Another condition was alleged to be linked to the BMF case i.e. the suppression of the 150 telexes mentioned above. This allegation was brought up by Alex Carlile, the Liberal Democrat Member of Parliament for Montgomery (The Sunday Times, 13/3/1994), Robert Parry, Labour Member of Parliament for Liverpool Riverside (Financial Times, 5-6/2/1994), Lorrain Osman (The Sunday Times, 13/3/1994), Kua Kia Soong, an opposition leader in the Malaysian Parliament (Daily Mail, 3/2/1994) and the Lorrain Osman Appeal Committee (LOAC, 1992). Documents obtained by the Sunday Times (13/3/1994) supported the allegation that Lorrain Osman was the victim of a cover-up designed to disguise the involvement of Malaysian politicians. These documents also suggested that British officials realised what was going on, but were under pressure not to jeopardise relations with Malaysia. (I have access to some of these documents. However, I am not allowed to enclose them in my thesis. These documents will be shown to my examiners on the day of my viva voce.) One of the telexes was from David Gillmore, the then High Commissioner to Malaysia and now head of the diplomatic service, who told the Foreign Office that a legal team from Hong Kong had arrived to interview witnesses and that "we have briefed them on some of the political background" (The Sunday Times, 13/3/1994). Another one was from Edward Youde, the then Governor of Hong Kong, who warned of a visit to London by Malaysian officials in relation to the Lorrain Osman case. He stated that given the pressures they must be under in their own country, it could not be assumed it was "only the

interests of justice" they had in mind (The Sunday Times, 13/3/1994). The Pergau Dam affair has thrown some light into the question of why the British Government were so willing to suppress the documents which could have freed Lorrain Osman. The reason was purely monetary i.e multi-million or billion pounds of deals were at stake for the British Government and British industries. The question that was always asked was whether all the three authorities of Malaysia, Hong Kong and the United Kingdom knew the facts and truths of the BMF scandal. The answer has to be 'yes' after the Pergau Dam affair.

This turn of events is worrying as there seems to be an international conspiracy to suppress the truth. It should not be forgotten that even the French Government refused to cooperate by extraditing Rais Saniman, the alternate Director of BMF. If such measures could be taken by the Government at an international level, then a conspiracy to defraud the people with the cooperation of different Governments in future is also possible at an international level for their own personal monetary gain. With the sophistication of technology these days allowing different countries to have closer and more frequent contacts with each other, a higher level type of fraud is possible and could increase. I would call these frauds "global frauds" i.e. frauds taken on an international perspective with the cooperations of people including Governments from different countries. This could also lead to what I will call "imperialism in international fraud" i.e. when a few Governments cooperate to defraud other Governments. This is

a thought which is not within the scope of this thesis, but nevertheless, it is a worrying phenomenon and should be pointed out so that research could be carried out in the near future.

The events recounted in chapter four have given a lot of food for thought to all Malaysian citizens. Perhaps also for people from countries with similar political background. I hope Malaysians reading this thesis will use this as an academic exercise and not to be misconstrued as criticising any particular race. I also wish that Malaysians who have read this thesis will start to analyze and be critical of governmental policies. It is high time we reflect openly whether the existing policies have really been beneficial to the country as a whole. It is one of the intentions of this thesis to make the Malaysian citizens more aware and interested in the underlying intentions of the Government policies and not just accept them at face value. If we are not careful, we may end up with a very authoritarian Government. The threat is real enough when the Prime Minister could sack the Lord President (Chief Justice) in July 1988. The reason behind this was that the judiciary had delivered judgements unfavourable to the Government. For example, in 1986, an attempt to expel journalists from the "Asian Wall Street Journal" was disallowed and in 1987, a judge found that the Home Affairs ministry had erred in refusing to allow the critical journal, Aliran, to publish in Malay. The Prime Minister was particularly outraged when a judge ordered the release of the opposition party (Democratic Action Party) leader detained under the ISA on

the ground that the detention order was "made without proper care, caution and a proper sense of responsibility" (Crouch, 1992; 27). In March 1988, the Prime Minister decided to amend the constitution with the intention, as he put it, "judges apply the law made by Parliament and not make their own laws as is happening now" (Crouch, 1992; 26). Then, in May 1988, the Yang di-Pertuan Agung (King of Malaysia) together with the Prime Minister laid charges of "gross misconduct" against the Lord President who was dismissed in July following a judicial inquiry. Similar charges were also brought against five Supreme Court judges resulting in the dismissal of two (Crouch, 1992; 26). The power of the judiciary in Malaysia has greatly weakened. If the trend continues, Malaysia is definitely heading towards an authoritarian Government, especially when it has the 'tools' to help it stay in power.

In conclusion, I believe that one of the pre-conditions of eradicating corruption and fraud in Malaysia, especially at the political level, is to get rid of communal politics and ideology. People of Malaysia should be re-educated to be non-communal in their outlook. Malaysia also needs highly ethical leaders to implement just policies in the country and also with the courage to eradicate corruption and fraud. Muzaffar argued that, "If unethical professionals, executives and entrepreneurs can flourish, it is partly because our political leadership lacks the will to deal with them effectively... More than that, there is even the suspicion that some of our leaders are unable to act against those involved in the various scandals because they are not

entirely free from blemish either. It is a truism that to root out corruption in any social system the crusaders against the scrouge must not be tainted in any way" (Muzaffar, 1989; 158). There had been widespread speculation among the public during the BMF case why the Prime Minister did not use the opportunity to bring down Tengku Razaleigh (who was implicated in the report of the Committee of Enquiry) who had become the leader of the new opposition party, Semangat '46.? Could it be related to what Muzaffar had said i.e. the Prime Minister himself was guilty, too? With this unanswered question, I conclude chapter four.

# Appendix 4.1

## PENINSULAR MALAYSIA: RATIO OF MEAN AND MEDIUM INCOMES, 1970-79 (\$ per household per month)

		in constant 1970 prices					in current prices				
		1970	1973	1976	1979	Annual growth rate, 1971-9 (%)	1973	1976	1979	Annual growth rate, 1971-9 (%)	Annual growth rate (1971-9) mean income of bottom 4% (%)
Malay	mean	172	209	237	309	6.7	242	346	513	12.9	10.6
	Median	120	141	160	200	8.8	163	233	332	12.0	
	ratio	1.43	1.48	1.48	1.55	1.16				1.08	
Chinese	mean	394	461	540	689	5.9	534	787	1,094	12.0	8.4
	median	268	298	329	383	4.1	343	480	636	10.1	
	ratio	1.47	1.55	1.64	1.72	1.44				1.19	
Indian	mean	304	352	369	467	4.9	408	538	776	11.0	9.9
	median	194	239	247	314	5.5	277	360	522	11.6	
	ratio	1.57	1.47	1.49	1.49	0.89				0.95	
Others	mean	813	1,121	870	1,132	3.8	1,299	1,268	1,881	9.8	14.8
	median	250	306	270	331	3.2	355	394	550	9.2	
	ratio	3.25	3.66	3.22	3.42	1.19				1.07	
All	mean	264	313	353	459	6.3	362	514	763	12.5	10.5
	median	166	196	215	270	5.6	227	313	449	11.7	
	ratio	1.59	1.60	1.64	1.70	1.13				1.07	
Urban	mean	428	492	569	675	5.2	570	830	1,121	11.3	
	median	265	297	340	368	3.7	345	495	611	9.7	
	ratio	1.62	1.66	1.67	1.83	1.41				1.16	
Rural	mean	200	233	269	355	6.8	269	392	590	12.8	
	median	139	159	180	230	6.8	184	262	382	11.9	
	ratio	1.44	1.47	1.49	1.54	1.14				1.08	

Source: 4MP: p. 37 Table 3.3  
p. 56, Table 3.8

Derived from Post Enumeration Survey of 1970 Population and Housing Census, Household Income Survey 1973, Labour Force Survey 1974 (reference 1973), Agriculture Census 1977 (reference 1976) and Labour Force Survey 1980 (reference 1979)

Source: Jomo, 1983; 53.



**BUMIPUTRA MALAYSIA FINANCE LIMITED**

(Incorporated in Hong Kong)

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TEL: 6-776267 TELEX: PUTRA HX 66077

Our Ref. J716

*Chen...*  
*I am familiar with the situation.*  
*2/7/83*  
**PRIVATE & CONFIDENTIAL**

September 1, 1983

Mr. Wong Aun Phui  
Advisor  
Bank Bumiputra Malaysia Berhad  
Head Office  
Kuala Lumpur.

c.c. Mr. L.E. Osman  
Y.B. Dato' Hashim Shamsudin

Dear Mr. Wong,

On the 30th August 1983, I received a phone call from the ICAC, i.e. Independent Commission Against Corruption, and was asked to return call to them urgently latest 5.00 p.m. on that day or at 9.00 a.m. the following morning.

On 30th August 1983 I called to the ICAC headquarters at 10.30 a.m. and this time I took along my instructing solicitor, Mr. Michael Yeung and my Junior Counsel, Mr. Anthony Neoh. The interview lasted until 12.30 p.m. in the afternoon as I had a lunch appointment with the Malaysian Commissioner in Hong Kong. The interview was requested to end at that time in order for me to keep my appointment with the Malaysian Commissioner. I went back together with the other two people to the ICAC headquarters at 3 p.m. and the whole interview lasted until 5.30 p.m. in the afternoon. This interview concerned a loan we had given to Mr. Trevor Bedford and since the ICAC felt that I could assist them in their investigation of Mr. Bedford and as accordingly advised by the legal counsel I had to cooperate and to inform the ICAC all I knew about that loan and since I had to take an oath or an affirmation there was no way that I could reserve my right but all questions had to be answered under that provision. In case I did not do so I could be sentenced to one years imprisonment and fine of HK\$20,000.00.

As this loan was settled in early 1981 there was a problem of remembering the details but photostat details were subsequently given to me by the ICAC, hence recollection of details was finally obtained as a result of the production of documents. I noticed, which I brought to the counsel's attention, that the photostat copies of certain documents of this loan had the Commercial Crime Bureau's chop on them and also the compliment slip from the Commissioner of Securities. This confirmed my earlier report to you whereby I had suggested, even though the police had re-assured our counsel that the files are to be confidentially kept by them, it was obvious from here that the Hong Kong police had been distributing photo copies of our documents definitely to at least two government departments,

.. /2

A WHOLLY OWNED SUBSIDIARY OF BANK BUMIPUTRA MALAYSIA BERHAD P.O. BOX 187, MENARA BUMIPUTRA, JALAN MELAKA, KUALA LUMPUR 50-16, MALAYSIA.



Appendix 4.2(ii)

Our Ref. J716

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September 1, 1983

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(1) The Commissioner of Securities and (2) the ICAC, and the way the Commissioner of Banking's inspectors were asking questions, it was obvious that the police had also sent certain documents to the Commissioner of Banking.

During my lunch with the Malaysian Commissioner in Hong Kong I was informed that the Malaysian government through our Minister of External Affairs had summoned the British High Commissioner in Malaysia and informed him of the Malaysian government's displeasure on the way the Hong Kong government departments were handling this murder case and the way our employees in Hong Kong had suffered as a result. I was also informed that the Minister of External Affairs had told the British High Commissioner in Malaysia to lay off this harassment of our staff and our office in Hongkong. Subsequent to that, the British High Commission in Malaysia had paid another visit to our Minister of External Affairs to report that certain measure were taken in order not to give us too much problem in Hongkong. The first meeting between the Minister of External Affairs and the British High Commission took place on 15th August 1983, but from the way things were moving after the 15th August 1983, it gave me the impression that the British government had not been responding too well to the Malaysian government's directive.

It is surprising to hear from the Malaysian Commissioner in Hong Kong that certain Hongkong government officials had been indicating to him that our total exposure to the Carrian Group and other customers were actually much more than what the papers had reported so far. This had become a worry to me personally and I was more than sure to say that all these leakages were as a result of the police seizure of our files during their various raids at various times in our office.

I had briefed the Malaysian Commissioner in Hong Kong of the various occasions whereby we experienced harassment both by the police, the ICAC, the Commissioner of Securities and the Commissioner of Banking, etc. He had taken note and possibly would report again to the Minister of External Affairs in Malaysia. I had also indicated to the Malaysian Commissioner in Hong Kong I had reported everything in details to Head Office and in case Wisma Putra wanted to know further details to get in touch with you.

Today I would be having a meeting with our counsel, may be also to include the Senior Counsel to get advice on what action are to be taken against the police for these various leakages that we had so far discovered. I would report at a later time of this meeting.

Kind regards.

Yours sincerely,  
for BUMIPUTRA MALAYSIA FINANCE LTD.

IBRAHIM JAAFAR

General Manager

.../3

HEAD OFFICE: 10, JALAN PUTRA, 50000 KUALA LUMPUR, MALAYSIA. BRANCH: 10, JALAN PUTRA, 50000 KUALA LUMPUR, MALAYSIA.

## **Chapter 5**

### **Comparative Case Studies**

In section 1 of this chapter, two other major fraud cases which have attracted a lot of attention in Malaysia will be briefly described to enable a comparison to be made with the BMF case and to enhance my analytical deductions in chapter 4. The first case, the Bank Rakyat case, took place in the 1970s, before the BMF case. The second case is the Deposit-taking Co-operatives case which took place in the late 1980s, after the BMF case had taken place. With the help of these two cases, I hope to illustrate my main point that some politicians in Malaysia are taking advantage of the New Economic Policy through fraud to make huge profits for themselves. The summaries of these cases are obtained mainly from the White Papers issued by the Malaysian Government and newspaper reports.

Section 2 tries to compare the fraud and corruption trends in Malaysia with those of other countries of different social and political systems, and economic situation. I hope to illustrate that the Malaysian case is not a unique one.

#### **1.1. The Bank Rakyat Case**

Bank Kerjasama Rakyat Malaysia Berhad (Bank Rakyat) was a co-operative society established in 1954 under the Co-operative Societies Ordinance of Malaysia 1948. By 1975, it had 17 branches. The Chairman of Bank Rakyat at that time, Haji Harun Haji Idris, was also the Chief Minister of the

State of Selangor, President of the Youth Movement of the United Malays National Organisation (UMNO) which is the leading Malay political party in the country, Vice-President of UMNO, and Chairman of the Selangor Barisan Nasional (the ruling coalition party). The Managing Director of Bank Rakyat at that time was Abu Mansor Basir. He was responsible to the Board of Directors for the daily management of the bank. The Board of Directors was in turn responsible to the members for the proper conduct of the bank's business. The Registrar-General of Co-operatives was responsible for ensuring that Bank Rakyat's operations conformed to the provisions of the Co-operative Societies Ordinance 1948 and the bank's by-laws. Finally, the external auditor had the legal and professional responsibility of reporting and explaining the actual financial position of the bank to members and to the relevant authorities.

Section 52(ii) of the Bank Rakyat's by-laws stipulated that the Board of Directors must be diligent and prudent as ordinary businessmen and that they were liable for any loss incurred by the bank due to any omission or contravention of the provisions of the Co-operative Societies Ordinance 1948 and the bank's by-laws.

Bank Rakyat's paid up capital increased from M\$3.307 mil. at the end of 1970 to M\$15.907 mil. at the end of 1975. It had 1,011 co-operative societies and 23,463 individual members at the end of 1975. At that time, the savings and fixed deposits with the bank was M\$171.021 mil.. Its primary objective was to uplift the economic status of its members, who were mainly poor farmers, fishermen, petty traders and

lower grade civil servants, through various activities in the field of finance, industry, agriculture and commerce in both the urban and rural areas. With the implementation of the New Economic Policy in 1970, it was expected that there would be an increase in Bumiputras' (Malays and other indigenous people) participation in the field of finance and commerce. Unfortunately, in the 1970s, the bank faced acute financial problems which resulted in it having an accumulated loss of M\$65.233 mil. in 1975. Its debts and liabilities amounted to M\$190.653 mil. and its assets were only M\$142.657 mil.. Since its debts and liabilities exceeded its assets by M\$47.996 mil., the bank was in a state of insolvency.

On 6 September 1975, Bank Rakyat held its nineteenth Annual General Meeting. The accounts for 1973 and 1974 were tabled. However, these accounts had no prior approval from the Registrar-General of Co-operatives which gave rise to suspicions and a lack of confidence among the members in the management of the bank. Due to the circumstances, the Registrar-General of Co-operatives held an inquiry under section 37(1) of the Co-operative Societies Ordinance 1948 into the constitution, administration and financial position of the bank. The inquiry revealed serious irregularities in the management of the bank. The police also conducted an investigation into the affairs of the bank and certain members of the top management. In order to prevent panic among its customers, the Federal Government issued a guarantee on 12 March 1976 that the deposits in the bank were secured.

The Government led by the then Prime Minister, Tun Hussein Onn, had taken positive measures in the Bank Rakyat case, unlike the BMF case, which included the replacement of the top management of the bank, the termination of services of officers and staff found grossly lacking in efficiency and integrity, the conviction of the Director as well as the other executive members involved in the malpractice, the enforcement of the Bank Kerjasama Rakyat Malaysia Berhad Act 1978 which enabled the Government to supervise and control the management and administration of the bank and providing it with substantial and immediate financial assistance in the form of a loan, the formulation of new policies on investments, loans and finance, the reorganisation of the management structure and the introduction of new operational systems which included annual budgeting and long term planning to ensure that the affairs of the bank and its subsidiaries could be properly managed. A white paper, which was issued in June 1979 to reveal the true nature of the case, was also published extensively to enable the public to have access to the details.

In the Bank Rakyat case, investigators from Price Waterhouse were appointed to examine and investigate the financial position of the bank as at 31 December 1975. The investigators noted that the bank was facing acute liquidity problems and estimated that between M\$100 mil. to M\$155 mil. was needed for it to continue to function.

Price Waterhouse investigators began their investigation in June 1976 and completed in early 1979. The investigators found that the accumulated losses of M\$65.233

mil. incurred by Bank Rakyat could be divided into: a) M\$37.948 mil. on expansion of the bank's activities through its subsidiaries and b) M\$27.285 mil. on its own banking operations. The accounts also showed that the management of the bank did not maintain the minimum liquidity ratio required. Its liquid assets in the form of cash and short term funds were only M\$14.586 mil. as against savings and fixed deposits of M\$171.021 mil., resulting in a liquidity ratio of 8.5% which was well below the 20% minimum liquidity requirement stipulated in section 63(ii) of the laws of Bank Rakyat.

The problems of Bank Rakyat, when analyzed through the report of Price Waterhouse, strongly resemble the BMF case. The losses suffered by Bank Rakyat were caused primarily by malpractice by the Director, Managing Director and a few officers of the bank. The management of the bank failed to comply with some of the requirements of the Co-operative Societies Ordinance 1948 and also some of its own by-laws. The investigators of Price Waterhouse summed up the problems as:

- a. Lack of proper planning and evaluation of operations and expansion of activities;
- b. Weaknesses in the system and poor control over lending activities;
- c. Dishonesty and lack of responsibility in particular of the Chairman and the Managing Director;
- d. Poor supervision and control.

As with the BMF case, the management of Bank Rakyat did not maintain proper records of its investments purchased and sold. Information was usually insufficient. Many decisions for these investments were made by the Managing Director, Abu Mansor Basir, without proper Board approval. These investments were usually not registered in the name of the bank, but of third parties accompanied by blank transfers resulting in dividends and bonus issues of shares being paid to the registered shareholders instead of to the bank. The investigators of Price Waterhouse revealed that investments in shares alone, paid by the bank, which were missing amounted to M\$3,296,168 excluding dividends and increase in value since the time of purchase.

With regards to the funding and lending policies, the existing rules and procedures were not followed closely although the Executive Committee of the bank had set up a committee on 14 August 1974 which had the power to approve loan applications between M\$100,000 and M\$500,000 and its members were the Chairman or Vice-Chairman, the Managing Director, the Registrar of Co-operative Societies, the Treasury representative and one other person. On 26 March 1975, the Board of Directors of the bank also appointed an Investment and Loan Committee consisting of the Chairman, the Vice-Chairman, the Managing Director, the Registrar of Co-operative Societies and the Treasury representative with powers to approve loans exceeding M\$100,000 to members. However, there was no evidence that these committees had ever met. There were instances where the loan procedures were not followed and loans were approved by individual

officers. Sometimes, approval was given to loans which were beyond the level of the officers' authorities. As with the problems of BMF, there were no proper evaluations of the creditworthiness of some of the customers, loans were not processed properly, securities for loans were not properly valued and follow up actions on loans in arrears were non-existent. There were also instances where loans were released prior to approval. The extreme practice was where loans were released without their applications being processed nor secured by any collateral. Although the majority of collateral securities were charges on land, other types of securities with dubious values in the form of quoted and unquoted shares, life policies, motor vehicles, machinery and even post-dated cheques were accepted. Some of the land collateral were released prior to settlement of the loans. Loans were also given to non-members which was not permitted by the Co-operative Societies Ordinance 1948. There was certainly lack of internal control and supervision over loan operations. The situation was made worse by weak internal auditing. The Managing Director, the Credit Controller and several officers of the bank managed the bank according to their own rules and discretion and usually beyond their authority. These weaknesses were exploited by other employees of the bank. For example, its branch managers and bank officers issued a number of letters of guarantee without following procedures. The existence of these blatant forms of malpractice, fraud and corruption was not surprising because the Director of the bank was a high ranking politician (as explained at the beginning of this



section) who condoned and practised these offences himself. This was not to say that there were no legitimate transactions that took place in the bank at that time. There were legitimate transactions being carried out for ordinary members by officers of the bank. There was no doubt that Bank Rakyat was a legitimate corporation set up with the good intention of helping the poor Bumiputras. However, it was transactions involving big sums of money approved by high ranking officials that were problematic. These officials were aware from the very beginning of the legal and illegal opportunities opened to them to make lots of money. They took advantage of both. These officials, who were also politicians and senior and educated members of this developing country, were given complete trust, especially by the poor Bumiputras, to carry out the objectives of the bank which were formulated in line with the New Economic Policy. Unfortunately, some of them had betrayed that trust under the guise of the New Economic Policy by defrauding the bank for their own benefits.

The poor loan recovery system, which was part and parcel of the fraud scheme, was a major factor contributing to the financial problems faced by Bank Rakyat. Most of the loans outstanding were substantially in arrears while some had not been paid at all. Among the more prominent debtors were the Melaka Chief Minister, Mohd. Adib Hj. Mohd. Adam, who had a debt balance of M\$357,839 on 31 December 1975 which increased to M\$414,826 in June 1977; the Kedah Executive Councillor, Zainol Abidin Johari, who took a loan of M\$800,000 in March 1975 to be repaid in 18 months, but by

June 1977, he had paid neither the loan nor the interest of the loan; and the former UMNO Kedah Assemblyman, Hj. Sapirol Hj. Hashim, who took a loan of M\$170,000 for a period of one year which was still outstanding at M\$128,820 on 30 July 1977 (Lim, 1982; 263). Recovery of the money was doubtful as most of the borrowers of the loans were not creditworthy in the first place, according to the normal lending procedures of the bank. In some cases, recovery was hindered by missing loan files. There were also cases where actions to recover certain loans were discontinued on the instruction of the Managing Director.

The accounts of Bank Rakyat for the years 1972, 1973 and 1974 were not approved by the Registrar-General of Co-operative Societies and in accordance to the Co-operative Societies Rules 1949, no dividends should have been paid out. However, between 1972 and 1974, a total of M\$2,148,082 was paid out as dividends.

As at 31 December 1975, Bank Rakyat had lost M\$37,947,757 on its subsidiaries in the forms of equity, loans and advances as all the subsidiaries had accumulated losses at the end of 1975. Its investments in some of its subsidiaries proved imprudent and without proper long term planning and evaluation. In some cases, projects were started, but never finished. The investments in the subsidiaries and loans to them were funded almost entirely from depositors' money. This practice of using short term funds to finance long term projects was against good banking practice. Branches, too, were opened on an ad hoc basis without proper study as to their viability, resulting in

losses. Between 1972 to 1975, its branches increased from eight to seventeen. The management of Bank Rakyat had also embarked on a number of building projects for the bank itself without prior determination of their long term funding sources. This was not surprising as at that time, the initial introduction of the New Economic Policy had spurred on many activities to improve the economic status of the Bumiputras. Amongst these well-intentioned activities, there were some spurred on by vested interests. Some of the activities of Bank Rakyat would fit into the latter group.

The investigators of Price Waterhouse also pointed out that malpractice in the bank took place as a result of the Board of Directors not discharging their responsibilities properly. For example, on 29 August 1975, the Board of Directors increased the sitting allowances from M\$200 to M\$500 per meeting for each director. The meeting also decided to back-date the allowances to cover 1973 and 1974. Although the sitting allowances were more than adequate, the directors also made claims on accommodation and other expenses. However, the blame was placed mainly on the Chairman, the Managing Director and certain officers of the bank who sometimes made important policy decisions without reference to the Board of Directors. Where reference was made, the assumption was that their decisions would be readily endorsed by the Board. The Chairman, Managing Director, the Credit Controller whose duty was to appraise loans for approval and to follow up repayments and a few officers of Bank Rakyat, managed the bank as if it was their own company, using their own discretion. A large number of

deals were carried out for the benefit of Bank Rakyat's customers who were usually somebody they knew and a loss to the bank. Dishonesty and lack of responsibility were also connected with the loan operations of the bank. For example, on 1 July 1975, a world heavyweight championship fight between Muhammad Ali and Joe Bugner was held in Kuala Lumpur and promoted by Tinju Dunia Sendirian Berhad. The promoters, however, did not have funds to stage the bout. Abu Mansor, the Managing Director of Bank Rakyat, was also Director of Tinju Dunia. He applied to First National City Bank (now Citibank) for a letter of credit not exceeding M\$6.5 mil.. However, the management of Citibank required adequate collateral for the facility. Tinju Dunia was not in a position to meet this requirement. To overcome the problem, the Chairman, Managing Director and Secretary of Bank Rakyat forged minutes of the bank's Investment and Loan Committee, allowing the bank's 3,000,000 shares in Dunlop Estates Berhad and M\$1,000,000 debenture stock of Kuala Lumpur-Kepong Amalgamated Limited, all costing M\$8,022,475 to be pledged to Citibank. They were charged in court for forgery and criminal breach of trust and all three defendants were found guilty.

Another example is given when, in September 1974, Bank Rakyat paid M\$82,500 to UMNO Selangor. The amount represented additional interest at the rate of half percent on fixed deposits of M\$26,500,000 lodged with the bank by the State Government of Selangor. There was no proper approval of this extra interest. According to Mohamad Ghazally Shahabudin, an employee of Bank Rakyat, this extra

interest was verbally agreed by Harun, the Chairman of Bank Rakyat who was also the Vice-President of UMNO, and Abu Mansor, the Managing Director. Ghazally received verbal instructions from Abu Mansor to pay the interest to UMNO. UMNO Selangor claimed that this sum was received in good faith as a donation and would not refund the money. Even so, this sum represented an unauthorised donation to a political party by the bank.

The Price Waterhouse investigation also revealed that stocks and shares for which the bank paid M\$3,296,000 were missing. Abu Mansor himself misappropriated 800,000 shares in Kuala Lumpur-Kepong Amalgamated Limited bought earlier by Bank Rakyat which amounted to M\$1.3 mil.. Abu Mansor pleaded guilty in court to misappropriating these shares. The loss of the other investments was reported to the police.

A number of the bank's officers had also been found to use the names of members dishonestly on loan applications. For example, a total sum of M\$20,373 was supposedly loaned to Haji Abdul Rahman. The payment voucher was signed by Basharuiddin Sulaiman. Haji Abdul Rahman denied receiving the loan payment. The cheques signed by Basharuiddin and Mohamed Baba were not crossed when issued. Further investigations revealed that the cheques were paid into the current account of Basharuiddin at Bank Bumiputra Malaysia Berhad, Kampung Baru branch.

As at 31 December 1975, several members of the Board and their immediate families had loans outstanding with Bank Rakyat amounting to M\$1,130,944. Out of this amount, M\$1,015,138 was in arrears. A few did not make any repayment

at all on their loans.

Finally, the Price Waterhouse investigation found that Kassim, Chan & Co., the auditors of Bank Rakyat, did not carry out its duties properly regarding the 1973 and 1974 accounts. In particular, they did not comment on:

- a. the maintenance of proper accounting records;
- b. the provision for doubtful loans;
- c. the valuation of investments in stocks and shares when the market price was substantially below cost.

There was also conflict of interest as Mohd. Kassim Sulong, an auditor of Kassim, Chan & Co. took a M\$100,000 loan from the Kuala Lumpur branch of Bank Rakyat on 31 January 1974. Although the loan was to be repaid in three years, there was not a single repayment in 1975. As at 30 June 1977, the balance outstanding on this loan was M\$146,485.

The Bank Rakyat case which took place before the BMF case had similar "micro" and "macro" problems to those of BMF i.e. the loans problems and corruption by the management who were also politicians or having strong political connections. The Chairman of Bank Rakyat, Harun, who was a very prominent politician with the ruling party, seemed to run the bank as if it belonged to him. As he was a senior Government official at that time, the people around him had the confidence to abuse the system of Bank Rakyat as long as they got his backing. From the few examples above, it could be seen that some of the politicians treated the bank as if

it was their own private bank where they could take money out any time they wanted without paying back. The Bank Rakyat case is similar to the BMF case in this aspect. The only difference is that the then Prime Minister, Tun Hussein Onn, was a very determined and honest politician and he made it very clear that he wanted the truth to be exposed to the public. He also condemned openly the culprits in the case who were all charged in the courts. The Malaysian public were quite satisfied with the handling of the Bank Rakyat case by the Government unlike the BMF case.

However, even with the introduction of stringent policies after the case, it was still possible for a more colossal case to take place in the form of the BMF case which had many similarities to the Bank Rakyat case. The possibility was there because there were politicians involved who were able to bend the rules they created. They were also able to use the existing laws and racial excuses for their own ends as explained in chapter 4. They were able to get away with it because they were the minority of better educated citizens who commanded vast respect and loyalty from the majority of the poor, uneducated and unquestioning citizens. The politicians who were nominated to uphold the New Economic Policy to help eradicate poverty, especially among the Bumiputras, had betrayed the trust placed in them by the public. They were the better educated and more privileged citizens of Malaysia who had robbed the poorer and less privileged citizens.

The next case to be discussed briefly is the Deposit-taking Co-operatives case which took place after the BMF

case. After the BMF case, more rules and regulations were introduced to prevent another major fraud scandal. However, these rules were all broken in the Deposit-taking Co-operatives case which also had strong political involvements. The similarities in these three cases are very obvious. One could wonder how this could be possible if the Management Committees of financial institutions and the Government officials claimed to have learnt a lesson each time one of these cases took place and that better rules and regulations were introduced to prevent another financial scandal. The irony was that all these three cases had political involvements and they were the leading financial scandals in Malaysia. It was politicians who made the rules and it was their members who, later on, went on to bend or ignore them.

### **1.2. The Deposit-taking Co-operatives Case**

As introduced earlier on in the Bank Rakyat case, the co-operative movement was introduced in Malaysia to assist farmers, fishermen and other low income groups in solving their socio-economic problems. Its function involved the pooling of the capital resources of its members to enter into ventures for the mutual benefit of members. The fruits of these ventures, which also included losses, were shared by members in the true spirit of the co-operatives. The Co-operative Societies Act was enacted in 1948 to facilitate the growth of the co-operatives. Prior to the 1970s, the co-operatives movement tended to be in-house co-operatives i.e. branches engaged in mutual help activities such as consumer



loans. The finance came from deposits of members and non-members provided that their by-laws permitted such activities and subject to the approval of the Registrar-General of the Department of Co-operatives Development. The Co-operative Societies Act was further amended in 1976 to enable urban co-operatives to invest their surplus funds in trade and industries. This prompted many businessmen to use the opportunity to set up co-operatives and established branches to fund their businesses. Some, with vested interests, exploited the situation which led to the loss of a huge amount of public funds.

The Deposit-taking Co-operatives case involved a group of 35 co-operatives whose members were mainly Chinese low-income earners. The management were also predominantly Chinese which included some prominent politicians and businessmen. As the Government had set up different types of public enterprises and institutions, in accordance with the New Economic Policy, to help the Bumiputras, these Chinese politicians and businessmen, too, decided that they must do something for their own community. Thus, the co-operatives were set up to help Chinese low income earners in line with those like Bank Rakyat. The Chinese low income earners welcomed this initiative taken by their politicians and they put their trust on them to help better their economic situation.

The problems of the Deposit-taking Co-operatives movement surfaced when one of the thirty-five co-operatives was unable to meet its deposit liabilities due to heavy withdrawals by its members. The Government empowered Bank

Negara Malaysia, the central bank, under the Essential (Protection of Depositors) Regulations 1986 to freeze the assets of the co-operative and its key management for investigation. This prompted heavy withdrawals on the deposits of other co-operatives. At the request of the Boards of Directors of several large co-operatives, the Government froze the assets of twenty-three other co-operatives and those of their Directors and principal office bearers on 8 August 1986. The passports of various Directors and office bearers were also impounded to ensure that they would remain in the country while investigations were being carried out. Seventeen firms of accountants were appointed to assist Bank Negara in its investigations.

The preliminary reports on the activities and financial position of the co-operatives were received on 17 August 1986. It was found that the data submitted by the co-operatives to the Registrar-General were generally incomplete, out of date and not very reliable. The twenty-four co-operatives had a total of 588,000 members and 522,000 accounts, involving M\$1.5 bil. in deposits collected from 630 branches. However, the net assets of the twenty-four co-operatives amounted to M\$890 mil. which was insufficient to meet total deposit liabilities of M\$1.5 bil.. The problems found were:

1. gross mismanagement of funds, due to lack of expertise or professionalism, lack of internal control or through imprudent management and in some cases, corruption was involved. Some investments and loans were made without the prior

- approval or against the specific disapproval of the Registrar-General;
2. although the Registrar-General's guidelines to section 33 of the Co-operative Societies Act 1948 provided that surplus funds should be invested in bank deposits and Government securities or purchase of land, subject to the approval of the Registrar-General, the co-operatives invested heavily in shares which incurred heavy losses as a result of the collapse of the share market;
  3. over investment in land and property, with almost 20% of assets in housing development projects and fixed assets, some of which were purchased at the height of the property market;
  4. over-commitment in loss-making or non-income generating subsidiaries and related companies. Some of these subsidiaries were opened without the approval of the Department of Co-operatives Development;
  5. incidence of negligence, fraudulent activities and conflicts of interest in certain co-operatives which led to imprudent lending of funds, including interest free lending, to Directors of the co-operatives, Director-controlled companies and parties which had connections with the Directors. Six cases of possible fraudulent conduct and thirteen cases of conflict of interest were being investigated. The amount extended as loans were 20% of total assets;

6. some co-operatives invested in assets or projects without the approval of the Department of Co-operatives Development;
7. some co-operatives which needed to borrow funds from other financial institutions did not have borrowing powers granted by the Department of Co-operatives Development. Seven out of ten co-operatives which had borrowing powers exceeded their limits;
8. Many did not maintain adequate liquid assets in contravention of the minimum liquidity ratio of 25% of deposits. As a result, many of them did not have the cash to meet depositors' withdrawals;
9. as the majority of the co-operatives assets were in long term assets which yield low or nil income, there was insufficient income to meet interest payments.

Some specific instances will be elaborated below, especially on the fraudulent practices of some of the Directors of the co-operatives to show the similarity they have with the BMF case and the Bank Rakyat case. The names of the co-operatives are in their acronyms or initials.

#### Kosmopolitan

Kosmopolitan had over 300 loan accounts with a balance of M\$71.2 mil.. Of these, 31 were made to Directors and 48 to staff. The repayment history of the loans was poor. Three loans with a total of M\$4 mil. were secured against ten

acres of rubber land which was not properly evaluated.

Kosmopolitan used shares which were pledged to it as collateral to raise M\$2.7 mil. to meet withdrawals by members in July 1986 without obtaining approval from the Registrar-General. This was clearly a case of criminal breach of trust.

Estimated profits which had not yet taken place were written down in the accounts as if they had already been obtained.

#### Korakyat

The directors engaged in activities which would derive personal benefits such as selling of land at inflated prices to the co-operative and using co-operative assets to charge against loans for their own purposes.

#### Fortiss

Loans in units of M\$100,000 were apparently extended to 311 members, repayable on maturity after five years. However, the interest repayments were found to be from two bank accounts in the name of an employee of a company connected with one of the Directors. Shares in Emtex Corporation purported to be held as collateral for these loans had been used to pledge as security against loans to a group of companies controlled by the Directors. There was clearly misappropriation of funds. Directors of the co-operative were also Directors and shareholders of Emtex in which Fortiss owns 1.8 mil. shares.

KGE

A sum of M\$480,000 was made to a company which is 80% owned by a Director of KGE for the company's services in securing the necessary approvals and documents for the development of a piece of land and the assignment of the company's joint-venture agreement with the landowner to KGE. This payment was not in accordance with the terms of the joint-venture agreement, which stipulated that the payment was to be made to the landowner in the form of developed housing units.

KGE also made payment of M\$420,000 to another company which is also 80% owned by the above mentioned Director for the company's services in securing the necessary approvals for conversion and sub-division of a piece of land. These payments were noted to be excessive.

Loans were made to the Directors of KGE and companies where one of them had an interest without any approval. They were also made without any form of collateral, documented guarantee or fixed term of repayments.

KGE made payments of M\$1,768,179 to a company which is 100% owned by an ex-employee for "development costs". Payments of M\$976,772 were also made to another company which is 50% owned by the same ex-employee for 'renovations', printing, stationary and goodwill. Apart from official receipts, there were no detailed supporting invoices.

As at 8 August 1986, KGE's total borrowing from deposits and banks amounted to M\$52.2 mil.. However, KGE's approved borrowing limit by the Registrar-General was only

M\$4.7 mil.

The investigators also noted that the qualifications of the management members of KGE were generally restricted to school levels and many of them held positions of responsibilities which did not commensurate with their educational background.

#### Kotena

Payments of honoraria with effect from 1 May 1985 were made to the Deputy Chairman and Treasurer at M\$5,000 and M\$2,000 per month, respectively, despite the accounts showing operating losses. This was against Section 34(3) of the Co-operative Societies Act 1948.

#### Sepadu

A loan of M\$1 mil. was extended to the sister of Sepadu's Chairman to purchase shares in Dayapi. Sepadu's Chairman was also chairman of Dayapi. In May 1986, the loan was converted into investment of Sepadu in 581,000 shares in Dayapi at the price initially paid for by the Chairman's sister. This resulted in Sepadu's cost being in excess of the market value at 31 May 1986.

Loans of M\$3,760,000 were also given to three individuals who were connected with the Chairman of Sepadu. The funds were used to purchase shares in Australia. The funds were transferred to Australia without getting approval from Bank Negara Malaysia, the central bank, as required by the foreign exchange regulations.

Advances of M\$2 mil. were also made to Star Rock

Products which had only a M\$2 paid-up share capital. Star Rock was a quarry company which had not commenced operation. The advances would be converted to 50% investment by Sepadu in Star Rock.

The investigation led by the central bank on the Deposit-taking Co-operatives case led to the prosecution of twelve Directors of six deposit-taking co-operatives in court. One of them, Tee An Chuan, the chairman of Kosatu and the then President of the People's Progressive Party (a component of the ruling coalition party), pleaded guilty while the others claimed trial. Of these eleven who claimed trial, they included a Deputy Minister, Wang Choon Wing, a former Deputy Minister, Tan Tiong Hong, the Youth leader of the Malaysian Chinese Association (a component of the ruling coalition party), Kee Yong Wee and a prominent businessman, Yap Peng (Khor, 1987; 98).

After the Bank Rakyat case and the BMF case, the Deposit-taking case followed within a few years. The same methods to obtain by fraud the large sum of money were employed in the Deposit-taking case. In this case, it was revealed that the Department of Co-operatives Development was also to be blamed for not carrying out its role efficiently. For example, Kojasa had made several applications to the Registrar-General for approval of its deposit-taking limits, but no reply had been received. The other groups of people that were blamed were the Management Committees of the co-operatives which had a few prominent Chinese politicians and businessmen as their members. From



the examples given above, it could be seen that many of the members of these Management Committees had the intention of using the co-operatives that they managed to make money for themselves. They gave a large portion of the loans to business tycoons, politicians and community leaders (Khor, 1987; 98) whom they knew. It was also with the collaboration of these people that they managed to swindle their clients' hard-earned money. It could be said that the rich Chinese were helping themselves to get richer at the expense of the poor Chinese. This fraud scandal also gives support to my point that there is increasing income disparity within the different ethnic groups and not between them. The New Economic Policy, when not implemented properly, will only have the situation become worse. Within the Bumiputra community, the setting up of public institutions by the Government to help promote their welfare were used as vehicles by unscrupulous politicians to make huge profits for themselves. Within the Chinese community, unscrupulous Chinese politicians used the excuse that the lower income Chinese group needed help and protection from them as the public institutions set up by the Government were only for the Bumiputras. The lower income Chinese group, where a huge number had little or no education, welcomed the initiative because they thought the politicians were genuinely concerned about their welfare. They trusted them to help them have a better living standard, especially when these politicians were also businessmen who seemed to be doing very well financially.

It should be pointed out that in developing countries,

the politicians were usually accepted by the poor and lower income public, with little or no education, as intelligent, capable and efficient people who would be able to turn the country into a rich and developed place for them. Whatever the politicians did was usually not questioned by the public. With this trust, these unscrupulous politicians and businessmen devised schemes supposedly to prevent the poor Chinese community from being left behind economically. In actual fact, these schemes had helped them to become rich illegally at the expense of the poor Chinese.

In conclusion to this section, I would not accuse all politicians and big businessmen of corruption. There were many who were genuinely concerned about the welfare of their people. They did initiate projects which were legitimate and beneficial to their community. However, once these projects were initiated, some of their unscrupulous members took the opportunities to make some illegal profits for themselves. The reason for such unscrupulous action given by Ahmad Noordin (whom I interviewed), the then Auditor-General leading the Committee of Enquiry in the BMF case, was greed. I do not have a definite answer as to why these people commit such offences or how they explain their own actions to themselves and to others. However, I do believe that they indulged in self-exculpation.

As can be seen from the three case studies, the methods of defrauding the poor employed by both unscrupulous Chinese and Bumiputra politicians were identical. Projects were undertaken with good intentions which were later taken advantage of by unscrupulous politicians and businessmen.

Both groups also made use of racial politics to further their base intentions as explained in chapter 4. Thus, the New Economic Policy, when misused, would have benefitted by not only the corrupt Bumiputra politicians, but also politicians from the other ethnic groups.

The case studies in this section aim to strengthen my conclusion that the methods of defrauding the Malaysian people by some of their unscrupulous politicians are similar throughout the history of Malaysia. As explained earlier, Malaysia is a relatively young developing country and the economic opportunities are vast. In the name of development, many projects and public institutions, which required vast sums of money, were launched. The setting up of these projects and public institutions were also guided by racial policies due to the nature of the history of Malaysia; the main racial policy being the New Economic Policy. The New Economic Policy had created ample economic opportunities for unscrupulous politicians to take advantage of. This fraud and corruption trend may not be an unusual phenomenon for developing countries as will be discussed below. However, the Malaysian politicians have an extra tool in their hands for their corrupt actions i.e. the racial sentiments of the people as explained in chapter 4. In all three of the scandals I have discussed above, racial elements were attached to every case. It has come to a point where the destructive racial sentiment of the people has become a constructive tool for unscrupulous politicians.

## **2. Fraud and corruption trends in other countries**

In this section, I will briefly discuss fraud and corruption in other parts of the world. I hope to illustrate that the Malaysian case is not a unique one. The trend of fraud and corruption among unscrupulous politicians is quite similar in the majority of developing countries. Before I begin, I would like to point out that the fraud and corruption carried out by unscrupulous politicians were condoned and in some instances 'helped' in a direct or indirect manner by some leaders from the developed countries. This point is very important as it shows how much hypocrisy there is among world leaders. I will begin with a discussion of Ferdinand Marcos from the Philippines.

When Ferdinand Marcos of the Philippines was ousted from his presidential position after being in power for 20 years from 1965 to 1986, the subsequent Government, under President Corazon Aquino, set up the Presidential Commission On Good Government to recover the Marcos' 'ill-gotten' wealth. Marcos and his wife had been accused of looting and plundering the Philippine economy of at least US\$5 bil. (Sunday Times magazine, 13/3/1994). The former Solicitor-General of the Philippines, Francisco Chavez, and his colleagues were able to track the flight of the money from the Philippines to Hong Kong, Switzerland, the Middle East, the Bahamas and New York. The amount that was located, totalling US\$356 mil., was lodged in Swiss bank accounts under the names of 17 foundations; the first was set up as early as 1967 and the last as late as 1986 (Sunday Times magazine, 13/3/1994). The Marcos family also owned extensive

property all over the world, bought through nominee companies as well as paintings by well-known artists. The members of the Presidential Commission found that 155 paintings, including works by Michelangelo, Rubens, El Greco, Goya, Monet, Renoir and Picasso, which were supposedly bought for the Metropolitan Museum in Manila, were missing. The extravagant lifestyle of the Marcos family was revealed when the Malacanang Palace where they lived was opened to the public. The ex-First Lady, Imelda Marcos, indulged in excesses that included 3,000 pairs of shoes, 2,000 ball gowns, 500 black bras, 200 Marks & Spencer black girdles, 35 racks of furs, 1,000 unopened packets of tights and five shelves of unused Gucci handbags with price tags still attached (Sunday Times magazine, 13/3/1994). These excesses were really shameful acts of greed when the per capita income of the Philippines was barely US\$200 a year, and with 30% of Filipinos who could barely afford basic necessities such as food, shelter, clothing and medicine. Six and a half million Filipinos lived in dilapidated houses and six million out-of-school youths in rural areas could not find work (Pedrosa, 1987; 154). The Food and Nutrition Research Institute of the Philippines estimated that 70% of the population were malnourished (Noble, 1986; 104). In 1980, the top 12.9% of the population received 22.1% of total income while the bottom 11% received 16.6%. By 1983, the top 12.9% of the population received 45.5% of total income, while the bottom 11% received only 6.4% (McDougald, 1987; 276).

A large amount of Marcos' wealth came from huge

development loans sponsored by the World Bank and the International Monetary Fund. Another source of Marcos' wealth came from illegal contributions received in return for his 'sponsorship' of Chinese businessmen seeking valuable import licenses in contravention of official Government efforts to encourage sales of locally made goods (Pedrosa, 1987; 76). He also rewarded his relatives and friends who supported him generously with important official positions and Government contracts. This group of people was called "The Grand Coalition" (McDougald, 1987; 188). The Grand Coalition practically controlled the economy in the Philippines. Bernie Villegas coined the term "crony capitalism" to explain the phenomenon of so much of the economy being taken over by friends and relatives of Marcos and Imelda (McDougald, 1987; 191). Marcos also created powerful roles linking to the development of the country for his wife. Through these roles, especially for culture and social welfare, she amassed their fortune. Their corrupt actions were 'helped' by the American Government. President Johnson, who called Marcos "his right arm in Asia", was eager to offer generous grants and loans supposedly for the Philippine people, but eventually the bulk of it ended up in Marcos' pocket (Pedrosa, 1987; 109). With support from the United States, other developed countries and international banks were eager to give aids and loans to finance 'development' in the Philippines although they knew Marcos was corrupt to the core. This was because of the belief that a country could never go bankrupt and with development going on in the Philippines, they would eventually reap huge

profits themselves.

When Marcos was barred from running for a third term in 1972, he declared martial law. His justification was to stop the threat of "invasion, insurrection or rebellion" (Pedrosa, 1987; 128) especially from the communist faction and the Muslims. The country was said to be in a state of anarchy and lawlessness. It was revealed in Noble's article that Marcos had ordered the staging of bombing and kidnapping incidents to justify his actions. This was later admitted by his then Defence Secretary, Juan Ponce Enrile (Noble, 1986; 83-84). Under martial law, Marcos had absolute political control over his country. When martial law was initially declared, all newspapers, except one which was owned by his 'crony', was placed under military guard. Six of the city's major television stations and nine radio stations were shut. Only one radio and one television station which were linked to Marcos were free to operate. Hundreds of opposition leaders and critics were arrested. Filipinos were prohibited from leaving the country. The death penalty was imposed for the illegal possession of firearms. Public demonstrations, rallies and strikes were banned and military commanders in the provinces were ordered to assume local Government powers. The implementation of martial law in the Philippines had the support of the United States Government even though they knew Marcos was a corrupt dictator (Pedrosa, 1987; 135-137).

Marcos also had hopes to form a dynasty. He elected Imelda to high ranking posts so that she could take over if anything happened to him. Imelda held posts like the

Governor of Metro Manila, a territory encompassing four cities and thirteen towns, Minister of Human Settlements, a ministry which functioned like a Government within a Government with access, but no accountability, to the funds of all other Government departments and a member of the Executive Committee which would take over in the event of Marcos' death or disability. Her power was second to the President. Her personal wealth rose from US\$250 mil. a year after the declaration of martial law in 1972 to US\$1.6 bil. by the end of their rule in 1986 (Pedrosa, 1987; 153).

Marcos' 'cronies' also defrauded a lot of money from the banks in the Philippines, which loaned them the money because of their connections with him, causing big financial scandals. For example, Dewey Dee<sup>1</sup> absconded with US\$84.7 mil. (McDougald, 1987; 212). McDougald claimed that corruption was a way of life in the Philippines during Marcos era and that it permeated every level of the Government (McDougald, 1987; 222). Crony capitalism resulted in lost bailout funds totalling more than US\$3 bil. (McDougald, 1987; 223).

In its 35 civil cases filed against Marcos, the Presidential Commission On Good Government had put the ex-President's worth at a total of US\$97.5 bil. in cash and assets (Kesavan, 1991; 115). Under Marcos' regime, a huge

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<sup>1</sup>Dewey Dee is a Chinese Filipino whose family was prominent in the Philippine business community. His Continental Manufacturing Corporation had once controlled about 80% of the acrylic yarn used in the export trade. He was also a banking entrepreneur with a reputation as a financial genius of sorts. He was a friend of Marcos (McDougald, 1987; 212).



gap was created between the rich and the poor.

President Suharto of Indonesia has always been accused by the media that he, together with his family members and business associates, acquired a vast fortune during his time in office. The First Lady, Siti Tien Hartinah is reportedly known as "Madame Tien Percent" for the 'commission' she gets from business deals or even 'Fifi' for fifty percent (Glickman, 1991; 25). Many of Indonesia's most essential and profitable monopolies are controlled by Suharto's three sons. Suharto himself is not accused of outright theft from the public treasury, but cash payments and items like land, etc. have been 'contributed' to him (Glickman, 1991; 25). Business monopolies and Government contracts of all sorts have been given to Suharto's family members and friends. They have easy access to credit due to their connections with the President and are bailed out when their firms are in deep financial trouble.

The Indonesian political system is based on so-called "Pancasila democracy". Its principles are monotheism, humanitarianism, national unity, democracy and social justice. These principles are intended to hold together the ethnically diverse Indonesian society. However, Pancasila has also become Suharto's weapon of control. Under the Anti-Subversion Act, any criticism of the Government can be interpreted as 'anti-Pancasila' (Glickman, 1991; 27). Legislations, such as the Broad Outlines of State Policy, require that the press be 'responsible'. A responsible press is said to be one which will protect the good name and authority of national leaders instead of slandering them and

their families. If the press is 'irresponsible', it will have its license revoked and its parent company will be penalised. The Penal Code also provides a maximum of six years' imprisonment for any statement made that is "deliberately intended to disparage the President or Vice-President". The television station is Government controlled. The sole private station is owned by Suharto's son (Glickman, 1991; 28). There are a large number of private radio stations, but they are only allowed to broadcast news prepared by the Government-owned radio network. Foreign journals and books that carry unfavourable information about the President or official policies are usually banned. Political protests in any form are not tolerated. For example, in 1978, when students protested on the ground that the ruling elite was promoting a culture of corruption by example and that Suharto was not a suitable candidate for re-election as President, Suharto sent troops, helicopters and armoured cars to university campuses in response. More than 200 student leaders were arrested and convicted at show-trials. Seven newspapers were banned for covering the students' protest. In 1994, the Government banned two weekly magazines, Tempo and Editor, and a weekly tabloid, Detik, for implicating senior Government officials in Indonesia's biggest banking scandal and criticising B.J. Habibie, Research and Technology Minister and a close friend of Suharto, over a former fleet of East German naval vessels purchased for the Indonesian navy. The reason given for the ban was that journalists on the magazines were putting "national unity and stability at risk" (The Times,

4/7/1994). The Indonesian court also sentenced to fines or jail twenty people among some 350 journalists, artists, students and human rights activists, who protested against the ban (International Herald Tribune, 29/6/1994).

Under the Moi regime in Kenya, corruption is rampant among top level politicians. The President's wealth is estimated to be from one hundred million to several billion American dollars (Glickman, 1991; 1). Moi's "greed for power" led to constitutional amendment outlawing all political parties except his own. The independence and power of the Attorney-General and the Auditor-General were curbed. When the media questioned Moi's policies, political crackdowns or corruption, he resorted to censorship, bans and arrest of editors.

In the southern regions of Nigeria, Wraith and Simpkins said the local Government had reached the point of being a 'conspiracy' against the public so riddled was it with bribery, nepotism, politics and corruption (Wraith & Simpkins, 1963; 19).

The Romanian dictator, Nicolae Ceausescu, who was executed by his own fellow countrymen, built himself the House of the Republic which was three times larger than Versailles in France. It had more than 1,000 rooms outfitted with ceilings of gold and floors, staircases and walls of marble. Galleries and salons had grand and expensive chandeliers. The chandelier in the plenary hall alone was believed to weigh as much as five tons. Over US\$1 bil. was spent on the building which consumed a huge amount of electricity, even as the state restricted apartments of the

local inhabitants to one 60-watt light bulb per room and when the quota was exceeded, electricity to an entire village could be cut off (Glickman, 1991; 3). Food was scarce and the Government regularly severed power during winter, leaving millions of people hungry and freezing in dark apartments.

In China, the ruling elite enjoys a wide variety of privileges and their children, known as the Red Princes, make huge profits through business deals allocated to them. The lower rank party cadres, especially in the countryside, are also known to embezzle public funds, pocket profits or to keep supplies for themselves.

Political fraud and corruption are by no means concentrated only in developing countries. In Italy, the former Christian Democratic Party collapsed because corruption was too rampant. In Britain, the "arms for aids" issue, also known as the "Pergau Dam affair", surfaced in 1994 involving giving monetary aids to developing countries by Britain in return for arms deals. It also revealed the undisclosed fact that the Tory Government had allocated business deals to British companies, namely Balfour Beatty and Cementation, which contributed heavily to the Tory Party funds. In Spain, in 1994, Prime Minister Felipe Gonzalez was asked to resign when the former head of the Spanish Civil Guard, Luis Roldan managed to flee arrest while being investigated for embezzling £2.5 mil. by manipulating accounts at the Interior Ministry and taking bribes. This issue took place at the same time as the investigation into allegations of tax fraud and insider trading against Mariano

Rubio, a former Governor of the Bank of Spain.

The list of political fraud and corruption that is happening around the world is inexhaustible. The Malaysian case is definitely not a unique one.

In conclusion, the problems of fraud and corruption exist in all economic situations i.e. underdeveloped, developing or developed economies, in all social and cultural settings, among all age groups, among both sexes, at all classes of society, at every decision-making level within all organisations, and at all times and era, whether there is war or peace. They affect all social systems; feudalism, capitalism, communism and socialism. Fraud and corruption are elements that do not discriminate. The only difference between fraud and corruption in different societies is the different combinations of the social, economic and political conditions which give rise to different types of opportunities conducive to their occurrences. The intensity of corruption fluctuates with these different combinations.

The analytical deductions I have made in this thesis are for major fraud cases with political involvement. These deductions do not apply to ordinary everyday fraud cases. As I could not obtain any data on only fraud cases with political involvement, I would like to look briefly at the overall fraud, criminal breach of trusts and commercial offences in Malaysia from 1980 to 1992 in my next chapter before I introduce the chapter on preventing and combating fraud.

## **Chapter 6**

### **General Commercial Crime Rate In Malaysia**

This chapter will discuss the overall fraud, criminal breach of trust, corruption and commercial offences in Malaysia. These data were obtained from the police headquarters and the Anti-corruption Agency in Malaysia. I would like to point out that it was not easy for me to try to get these data. I had to go through the head of the Commercial Crime Division at the police headquarters before any of its officers would see me. In fact, one of these officers was so afraid of breaching the Official Secrets Act 1972 (amended in 1983 and 1986) that he told me not even to reveal I had spoken to him. Eventually after pleading with the head of the Commercial Crime Division to help me, he directed one of his officers to assist me. I must admit I was fortunate enough to be able to use my sponsor's name i.e. Universiti Utara Malaysia to get the assistance I needed. It is a sad fact that the police in Malaysia are not helpful to students researching commercial crime. Also, the data are never up to date. I had to give a month's notice for them to get the data ready. There was no proper prospectus on the role and work of the police force in Malaysia which I requested.

The Anti-corruption Agency was more helpful. The Director-General of the agency actually gave me the data personally and he even gave me permission to use the agency's library. There was a proper prospectus on the role and work of the agency. The Director-General was very generous to me, giving me whatever papers he or the

personnel of the agency had written to help me in my work. The data the agency had were also very up-to-date and were given to me on the day I visited the agency.

As with the data on reported fraud cases involving financial institutions in Malaysia, it was sent to me via my sponsor by Bank Negara, the central bank of Malaysia. My sponsor had to intervene by writing a letter on my behalf before Bank Negara would release any information. This was because much of the information held by Bank Negara was considered to be official secrets under the Official Secrets Act 1972 which has already been explained in chapter 4, section 2.2.. The personnel of Bank Negara had to be doubly sure that the information they released was not within the definition of official secrets and that it would not be misused.

This chapter will give a brief explanation of all the data collected before an analysis is made of them. But, before I begin the discussion on the data, it is important to give a brief outline of how they were collected by the police, the personnel of the Anti-corruption Agency and the central bank of Malaysia. The information in this chapter is taken mainly from papers published and presented by the Chief of Police, the Director-General of the Anti-corruption Agency and the personnel of Bank Negara as well as from interviews with the Director-General and also inspectors from the Commercial Crime Division of the police headquarters.

**1. Collection of data by the police and the personnel of the Anti-corruption Agency**

**1.1. The police**

According to the Chief of Police in Malaysia, there is no legal definition of "commercial crime" found in the various Acts of Parliament in Malaysia (Omar, 1990; 2). The officers of the Commercial Crime Division deal with the following activities under the heading of commercial crimes:

1. Advance fee fraud - dishonestly/fraudulently requesting advance fees in contemplation of future commercial dealings;
2. Donation fraud - dishonestly collecting donations on the pretext of charitable causes;
3. Management fraud, which may include credit facility fraud, corruption, ultra vires decisions for personal advantages, etc.;
4. Exchange control violations such as prohibited fund transfer;
5. Wilful tax evasion such as:
  - a. omitting to submit a return on tax matters;
  - b. making a false statement or entry on tax matters;
  - c. falsifying or authorising the falsification of books of accounts or other records relating to tax matters;
6. Securities fraud such as dealing in lost or stolen share certificates, insider trading, forgeries, etc.;
7. Market and trading abuses such as illegal



restrictive practices, hoarding and price manipulation;

8. Franchise fraud which may include unauthorised use of famous trademarks, ingredients and names of reputable businesses;
9. Fraudulent insurance claims which may include false claims, inflated claims, collusion with adjuster, etc.;
10. False accounting;
11. Criminal banking which may include running a bank without a license, illegal money lending and illegal deposit taking;
12. Futures market fraud which may include manipulation of markets, unauthorised dealing with marketing of currencies, unregistered dealers, etc.;
13. Social security and welfare fraud which may include fraudulent manipulation of welfare claims and illegal withdrawal of funds from Employees Provident Fund, etc..

(Omar, 1990; 3)

These commercial crimes are regulated by laws which help to create a stable commercial environment in Malaysia. Examples of these laws are the Penal Code, the Companies Act 1965, the Commodities Trading Act 1985, the Banking and Financial Institutions Act 1989, the Societies Act 1966, the Co-operative Societies Act 1948 and the Securities Industries Act 1983.

Commercial offences in Malaysia fall under the purview of the Commercial Crime Division of the Criminal Investigation Department of the Police Force. The Division has been divided into four broad categories according to economic activities:

1. Banking and financial institutions;
2. Deposit-Taking Co-operatives/Institutions and Insurance;
3. Corporations and companies;
4. Forgeries, counterfeit, credit cards, securities industry, etc..

The Commercial Crime Division recruits qualified and experienced police officers to investigate and/or prosecute any commercial offence. Some of them have degrees in law, business studies, accounting, computer science or finance. On 11 August 1990, it was reported that the Government had approved the increase in the number of officers from 20 to 85 in 1989 (NST, 11/8/1990). The division has also started an educational scheme to send its officers for further education, both locally and abroad. According to the Chief of Police, officers of the Commercial Crime Division also carry out proactive investigations as well as the usual reactive investigations. This activity is stipulated by the Criminal Procedure Code. For example:

Section 103 - Every police officer may interpose for the purpose of preventing and shall to the best of his ability using all lawful means prevent the commission of

any seizable offence.

Section 105 - A police officer knowing of a design to commit any seizable offence may arrest without orders from a Magistrate and without a warrant the person so designing if it appears to such officer that the commission of the offence cannot otherwise be prevented.

Thus, with the provisions of the Criminal Procedure Code, police officers have a legal as well as a moral duty to fight commercial crime. However, the public has no such legal duty to do so. Any reporting of a commercial crime or "whistle-blowing" is up to the individual, but, according to an officer at the Commercial Crime Division, this lay reporting contributes to a large extent the data concerning commercial crime. Unfortunately, the officer has no idea what percentage of commercial crime is reported by the public. I presume there is no way one could know. Thus, investigations by officers of the Commercial Crime Division depend largely on reporting by the public. This will directly affect the annual data on commercial crimes in Malaysia. Although the data rely heavily on reporting and thus are not without problems for analysis, they at least give us the opportunity to compare the attitude of the public towards commercial crimes every year.

## **1.2. The Anti-corruption Agency**

The Anti-corruption Agency was established in 1967 as

an independent investigation agency consisting of officers who are trained to enquire and investigate cases of bribery and corruption. Its officers are also expected to keep constant vigilance on any corrupt practices by Government officials. Other functions of its officers are the carrying out of studies and research into possible causes and related problems and the introduction of means to alleviate corruption. They also conduct surveys and appraisals of the management system of the various ministries, statutory bodies, Government agencies and Government departments from time to time to expose the weaknesses and shortcomings in their operations.

The Anti-corruption Agency is an organisation under the Prime Minister's department. It is headed by a Director-General who is appointed by His Majesty the King on the advice of the Prime Minister. The Anti-corruption Agency has six divisions with their own functions and divisions i.e. the Prosecution, Investigation, Intelligence, Prevention, Training and the General Management (commonly called the Administration) Division. Each division is headed by its own Director. All the divisions, with the exception of the Training Division, have their own sub-units in all the 13 states in Malaysia to carry out their activities more efficiently.

When the Anti-corruption Agency started its operation, there were 94 officers who were originally police officers (Anti-corruption Agency, 1992; 53). By 1977, the figure rose to 449 (Anti-corruption Agency, 1992; 61). In 1981, the Government approved the intake of the Anti-corruption Agency

officers to reach the number of 1,092 (Anti-corruption Agency, 1992; 67).

On 1 January 1981, a Communication and Publishing branch was also established at the Anti-corruption Agency headquarters to educate the public, from school children to the nation's top management, on the ill effects of corruption. Campaigns on the eradication of corruption were launched through school debates, school oratorical contests, seminars, exhibitions, public speeches and lectures and the mass media. These awareness programmes also encourage the public to cooperate with the Anti-corruption Agency to prevent and combat corruption. The number of activities carried out by the Anti-corruption Agency from 1987 to early 1993 is listed below.

**Table 6.1**

**Number of corruption awareness activities carried out by the Anti-corruption Agency**

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u> <u>(April)</u>
1. Speeches, lectures or dialogues	195	297	302	289	281	256	134
2. Seminars and workshops	-	2	3	11	2	3	1
3. Exhibitions	-	3	8	9	11	7	1
4. Official visits of ACA officers to Department heads	31	48	167	134	170	171	61

Source: Anti-corruption Agency, Malaysia

As explained in chapter 4, the Anti-corruption Agency is empowered by the Anti-corruption Agency Act of 1982 which provides the officers of the agency with all the powers prescribed for police officers in the Prevention of Corruption Act 1961 and the Police Act 1967. The Act also provides the officers of the agency with all the powers of custom officers under the Customs Act 1967 and powers as provided under the various Criminal Procedure Code. These legal powers vested in officers of the Anti-corruption Agency enable them to carry out their duties which include investigating, arresting and prosecuting.

The Anti-corruption Agency headquarters and its sub-units receive information or reports from various sources which include the following:

1. Anonymous letters/mass media and phone calls;
2. Individual official letters;
3. Sources developed and nurtured by the Anti-corruption Agency officers;
4. Public Complaints Bureau;
5. Police Authorities;
6. Official letters from Ministries/Government departments;
7. Telephone calls;
8. Personal contacts with the Anti-corruption Agency officers;
9. Lodging complaints at the Anti-corruption Agency offices.

(Anti-corruption Agency, Malaysia)

According to information I have obtained during my visit to the Anti-corruption Agency, the most common form of complaints about corruption received by them was anonymous letters which made up about 47% (or 16,678 letters) of the total information or complaints received between 1985 and 1989. This meant that 3,336 anonymous letters were sent per year. This figure was rather high and it showed that the public were concerned about corruption and they would rather report anonymously to prevent a backlash on themselves. The second most popular way was through individual official letters which made up about 26% (or 9,162 letters). Only about 19% of the total information received was gathered by officers of the Anti-corruption Agency through their informers or sources. The personnel of the Anti-corruption Agency always make it very clear to the public that the identity of the informer is protected. Thus, it can be seen that the Anti-corruption Agency, like the police, rely heavily on the public or civil servants to report any case of corruption. The officers of the Anti-corruption Agency investigate all cases referred to them including the anonymous ones. The position or status of the accused and how big or small the case may be are irrelevant. Every piece of information received will be given due consideration and attention. If the evidence is strong enough, the Anti-corruption Agency would proceed to initiate court action. Otherwise, the suspect would be referred to his department or ministry to face disciplinary action. A report would also be prepared by the officers of the Anti-corruption Agency.

### **1.3 Bank Negara, the central bank of Malaysia**

The role of Bank Negara is to ensure that the banking institutions and other financial institutions comply with regulations set up under the Banking Act 1973, the Banking and Financial Institutions Act 1989 and the Central Bank of Malaysia Ordinance 1958. These regulations were introduced to ensure the continuance of high standards of banking and finance in the country. Under section 69 of the Banking and Financial Institutions Act 1989, the central bank has the power to examine, without prior notice, the books or other documents, accounts and transactions of each licensed financial institution and of any office outside Malaysia of a licensed local institution. If any financial institution breaks any regulation, the Bank is empowered under these Acts to take certain courses of action which it deems relevant to the particular institution. Likewise, if any financial institution is facing a crisis, for example if it is facing a liquidity problem, it can request the help of the central bank. Under Section 54 of the Central Bank Ordinance 1958, Bank Negara may also, with the approval of the Minister of Finance, make regulations for the better carrying out of the objectives and purposes of the Ordinance. Thus, the role of Bank Negara is like a guardian to all the financial institutions in Malaysia.

The data I have from Bank Negara are on reported fraud cases involving financial institutions. As the title suggests, the data depend heavily on the willingness of the personnel of the financial institutions to report fraud committed against them. As officers of Bank Negara have the



authority to check on these institutions, the data also depend on the discovery of fraud offences in these institutions by the central bank.

In the next section, I will explain the data which I have collected from the police headquarters, the Anti-corruption Agency and Bank Negara before I analyze them in the last section of this chapter. As stated above, these data are based mainly on reports and complaints by the public and civil servants.

## **2. Commercial crime**

From Table 6.2, Table 6.3, Figure 2.1 and Figure 2.2, it can be seen that commercial crimes in Malaysia were increasing between 1980 and 1988 and decreasing slightly from 1989 to 1991. In 1980, the number of reported cases was 2,794. By 1988, the figure had increased by 180% i.e. by 5,047 cases and by 1991, it went down to just over 156% i.e. 4,350 cases. In less than a decade, commercial crimes in Malaysia had almost doubled. It is interesting to note that the highest number of reported cases was between 1985 and 1988 i.e. the period immediately after the BMF scandal. However, the number of cases where the offenders were caught from the total number of cases reported was not very encouraging i.e. an average of 24% between 1980 and 1989 (see Table 6.2 for details). From Table 6.3, Figure 2.1 and Figure 2.2, it could be seen that the percentage for the number of cases settled was even less encouraging i.e. an average of 22.25% between 1980 and 1991. The percentage was relatively high for 1984 and 1985 i.e. 29% and 34%

Table 6.2

## Commercial Crime in Malaysia from 1980 to 1989

Year	No. of cases	Loss	Amount Received	Caught/ % of no. of cases	Charged (No. of cases)	Settled/ % of no. of cases
1980	2,794	M\$ 21,348,898.67 US\$ 78,920.00	M\$ 492,327.69 US\$ 78,920.00	772 (28%)	624	577 (21%)
1981	3,016	M\$ 20,587,349.57 US\$ 7,200.00	M\$ 600,828.29 US\$ 7,200.00	880 (29%)	755	898 (30%)
1982	3,166	M\$ 64,951,721.12 US\$ 115,150.00	M\$ 1,249,765.40 US\$ 115,150.00	843 (27%)	840	745 (24%)
1983	4,269	M\$ 56,239,319.99 US\$ 55,660.00	M\$ 896,452.77 US\$ 55,680.00	989 (23%)	822	858 (20%)
1984	4,491	M\$ 67,310,053.99 RP 44,760,000.00 US\$ 86,400.00	M\$ 4,500,919.09 RP 44,760,000.00 US\$ 86,400.00	1,126 (25%)	821	1,291 (29%)
1985	5,026	M\$ 85,923,039.02 US\$ 72,990.00 RP 1,890,000.00 S\$ 50.00	M\$ 3,033,070.58 US\$ 72,990.00 RP 1,890,000.00 S\$ 50.00	1,209 (24%)	835	1,691 (34%)
1986	5,043	M\$ 168,717,852.93 US\$ 7,100.00 RP 490,000.00	M\$ 1,286,053.23 US\$ 7,100.00 RP 490,000.00	1,122 (22%)	763	640 (13%)
1987	4,748	M\$ 172,734,775.27 US\$ 130,420.00 RP 12,090.00 HK\$ 1,000.00	M\$ 4,314,152.12 US\$ 130,420.00 RP 12,090.00 HK\$ 1,000.00	1,102 (23%)	696	819 (17%)
1988	5,047	M\$ 139,006,966.91 US\$ 12,400.00 S\$ 200.00	M\$ 1,293,488.40 US\$ 12,400.00 S\$ 200.00	1,142 (22%)	503	863 (17%)
1989	4,591	M\$ 130,833,493.60 US\$ 1,480,704.84 Yen 3,000,000.00 S\$ 26,050.00 Baht 8,500.00 BR 60.00	M\$ 3,607,717.50 US\$ 40,200.00	793 (17%)	323	594 (13%)

Source: Haniff Omar, 1990

Table 6.3

Reported cases of commercial crimes, 1980 to 1991

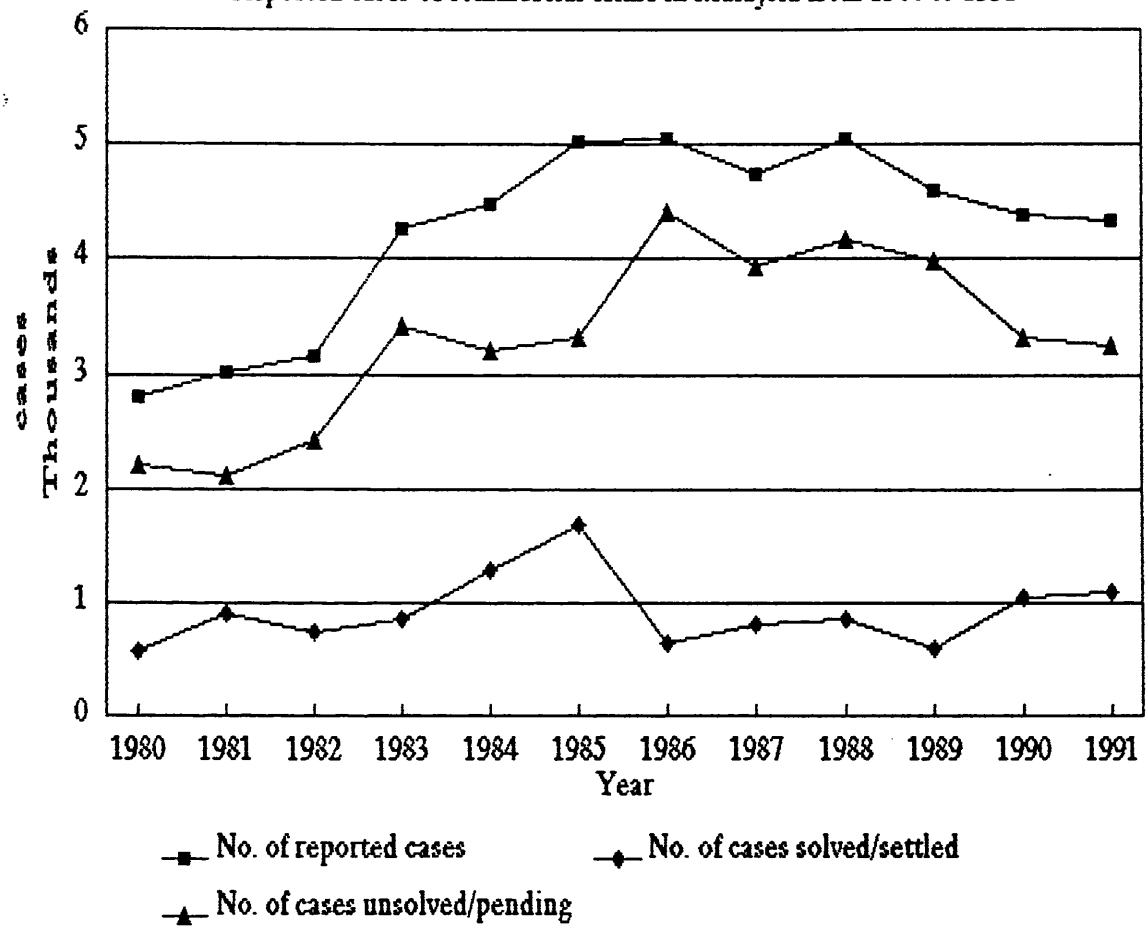
<u>Year</u>	<u>Cases</u>	<u>Solved*</u>	<u>Unsolved/Pending</u>
1980	2,794	577 (21%)	2,217
1981	3,016	898 (30%)	2,118
1982	3,166	745 (24%)	2,421
1983	4,269	858 (20%)	3,411
1984	4,491	1,291 (29%)	3,200
1985	5,026	1,691 (34%)	3,335
1986	5,043	640 (13%)	4,403
1987	4,748	819 (17%)	3,929
1988	5,048	863 (17%)	4,184
1989	4,591	594 (13%)	3,997
1990	4,388	1,054 (24%)	3,334
1991	4,350	1,103 (25%)	3,247

\* solved means the case has been settled

Source: Malaysian Royal Police.

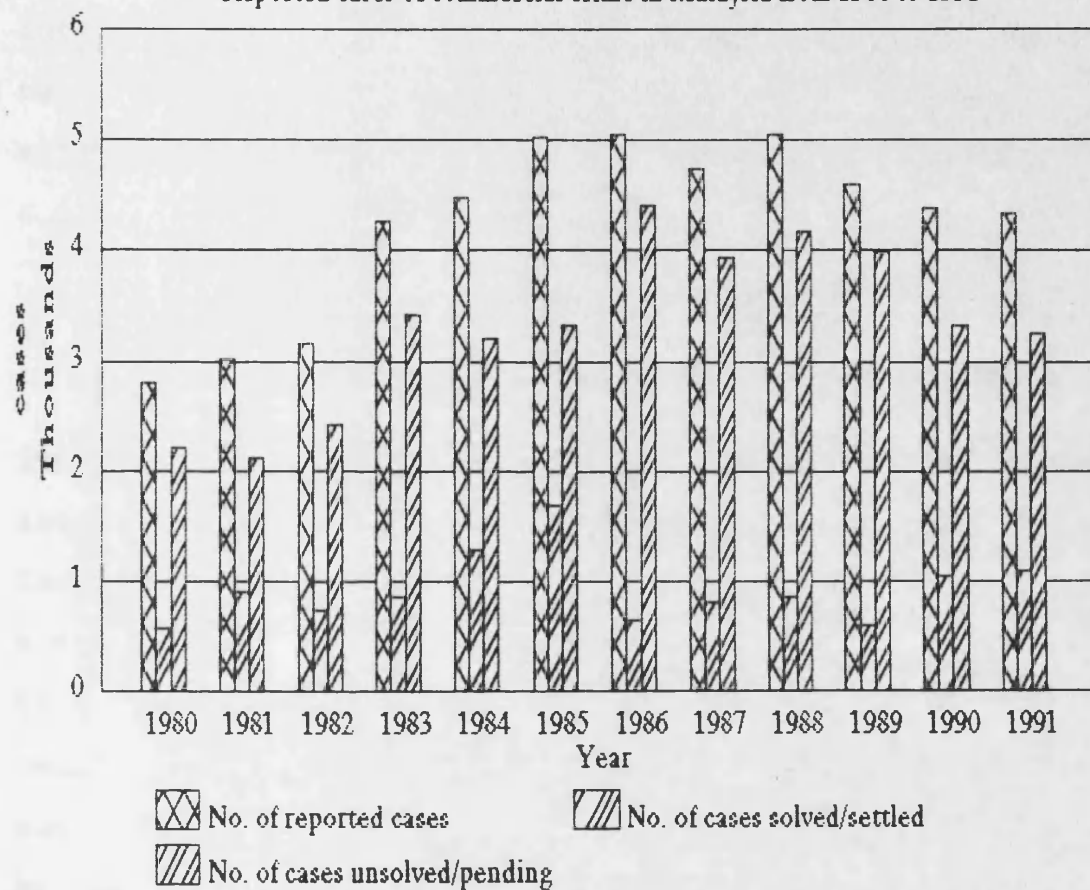
# Figure 2.1

Reported cases of commercial crime in Malaysia from 1980 to 1991



## Figure 2.2

Reported cases of commercial crime in Malaysia from 1980 to 1991



respectively, the period when the publicity for the BMF scandal was at its peak. After this period, the average percentage for the number of cases settled dropped drastically low between 1986 and 1989 i.e. 15%. The amount of loss through commercial crime in Malaysia was reported in different currencies and this shows that there must be some international involvement. The amount lost increased from tens of million Malaysian dollars in 1980 to hundreds of million Malaysian dollars in 1989 (please refer to Table 6.2).

### **3. Criminal breach of trust**

From Table 6.4 and Figure 3.1, there was a definite increase in criminal breach of trust cases in Malaysia from 1985 to 1990 i.e. from 1,290 cases to 4,388 cases, an increase of 340%. However, between 1985 and 1987, there was a slight drop in the number of cases, i.e. from 1,290 cases to 1,035 cases. The number increased again in 1988 to 1,335 cases. However, with no viable explanation except for the actions of the public and the ways the cases were reported by the police, there was a sudden drop in 1989 to 870 cases and a sudden increase to 4,388 cases the next year, i.e. 1990. With this sudden increase of 3,518 cases within a year, there is some doubt to the validity of the data. It should be pointed out that this sudden increase might be a sign of increase public trust in the enforcement institutions.

The amount lost through this crime, as shown in Figure 3.2, increased from M\$65.9 mil. in 1985 to M\$94.4 mil. in

Table 6.4

Criminal Breach of Trust in Malaysia from 1985 to 1990

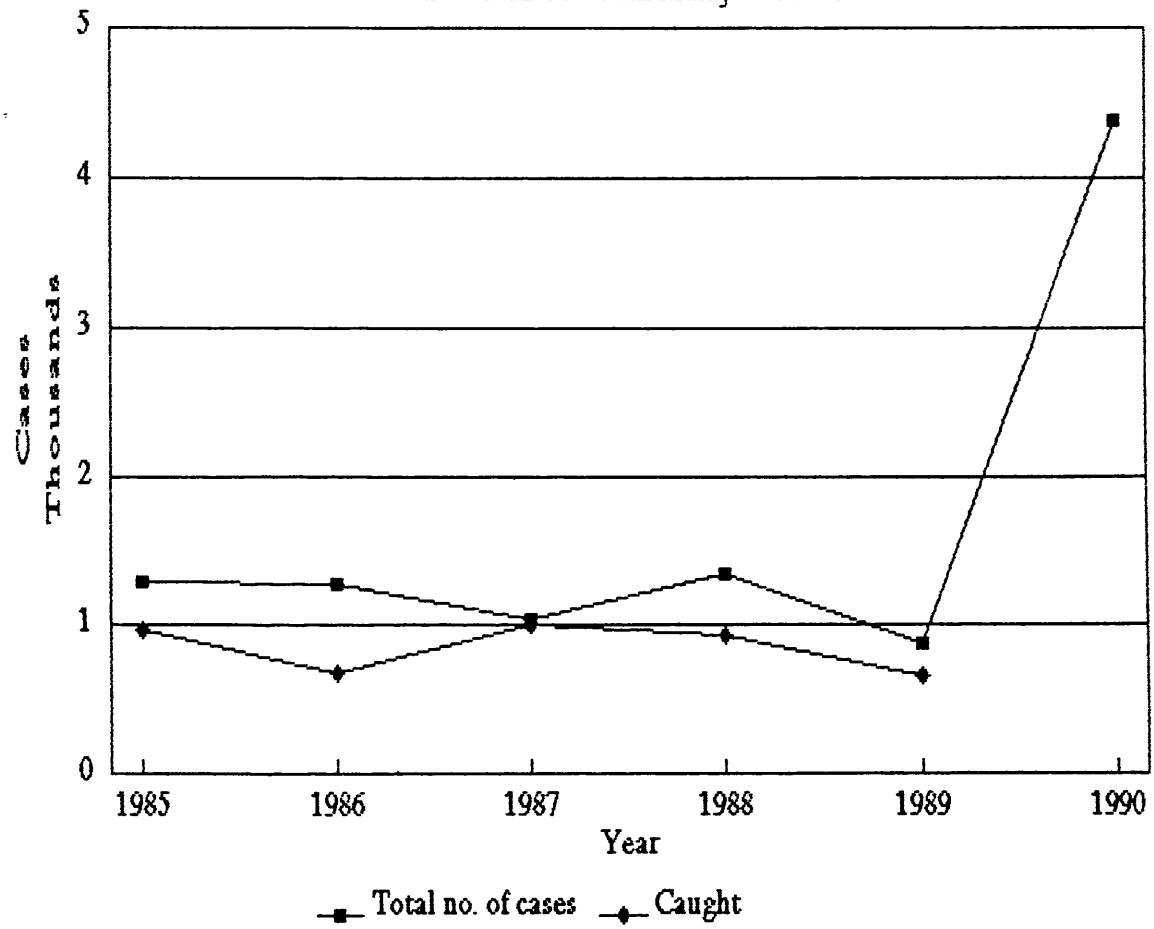
Year	No. of Cases	Loss (Mil.\$)	Caught				Occupation of Accused								Victims/Place of Crime			
			Total	Malay	Chinese	Indian	Others	Director	Lawyer	Business -man	Civil Servant	Company Employee	Jobless	Others	Individual	Bank	Company	Government Office
1985	1,290	65.9	963 (75%)	M	M	M	M	93 (10%)	19 (2.1%)	79 (8.5%)	12 (1.3%)	584 (63%)	95 (13%)	44	498 (39%)	37 (2.9%)	745 (58%)	10 (0.8%)
				395	427	99	18											
				F	F	F	F											
				6	15	3	-											
1986	1,275	94.4	674 (53%)	M	M	M	M	80 (8.5%)	11 (1.2%)	85 (9%)	23 (2.4%)	611 (65%)	87 (13.9%)	44	509 (40%)	30 (2.4%)	718 (56.3%)	18 (1.4%)
				331	196	86	31											
				F	F	F	F											
				8	17	5	-											
1987	1,035	92.8	993 (96%)	M	M	M	M	64 (6.4%)	18 (1.8%)	79 (8%)	41 (4.1%)	673 (68%)	64 (11.9%)	54	421 (40.7%)	22 (2.1%)	557 (53.8%)	35 (3.4%)
				471	397	78	22											
				F	F	F	F											
				13	9	3	-											
1988	1,335	81.7	930 (70%)	M	M	M	M	73 (5.9%)	14 (1.1%)	54 (4.4%)	27 (2.2%)	982 (80%)	52 (6.7%)	31	467 (35%)	24 (1.8%)	821 (61.5%)	22 (1.6%)
				393	362	97	34											
				F	F	F	F											
				20	18	6	-											
1989	870	45.7	650 (75%)	M	M	M	M	114 (18.9%)	13 (2.2%)	89 (14.8%)	35 (5.8%)	293 (49%)	24 (9.8%)	35	182 (31%)	14 (2.4%)	360 (62%)	25 (4.3%)
				250	293	52	26											
				F	F	F	F											
				12	14	3	-											
* 1990	4,388	117.6		M	M	M	M	91 (3.9%)	6 (0.3%)	198 (8.5%)	22 (0.9%)	1,011 (43%)		1,011 (43%)				
				F	F	F	F											

Source: Haniff Omar, 1990  
 \* Malaysian Royal Police

M - Male  
 F - Female

# Figure 3.1

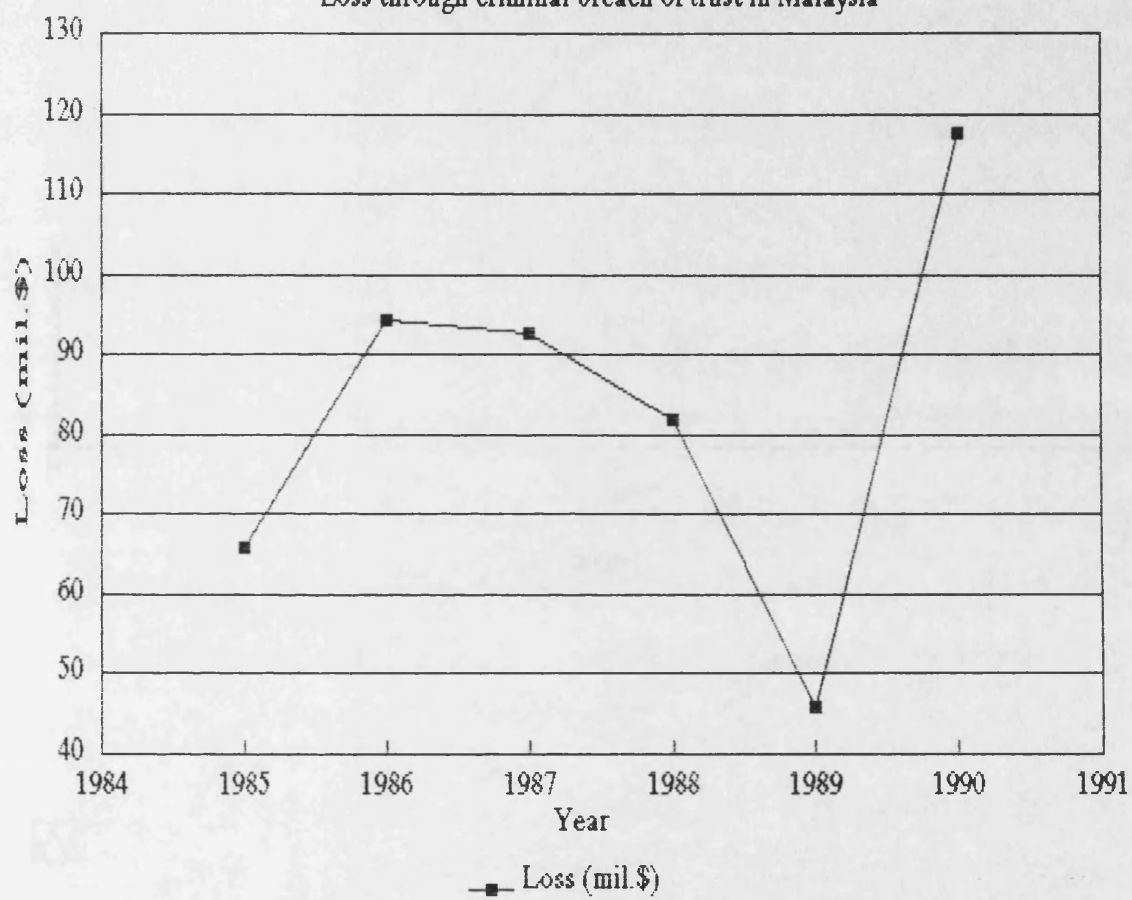
Criminal breach of trust cases in Malaysia from 1985 to 1990





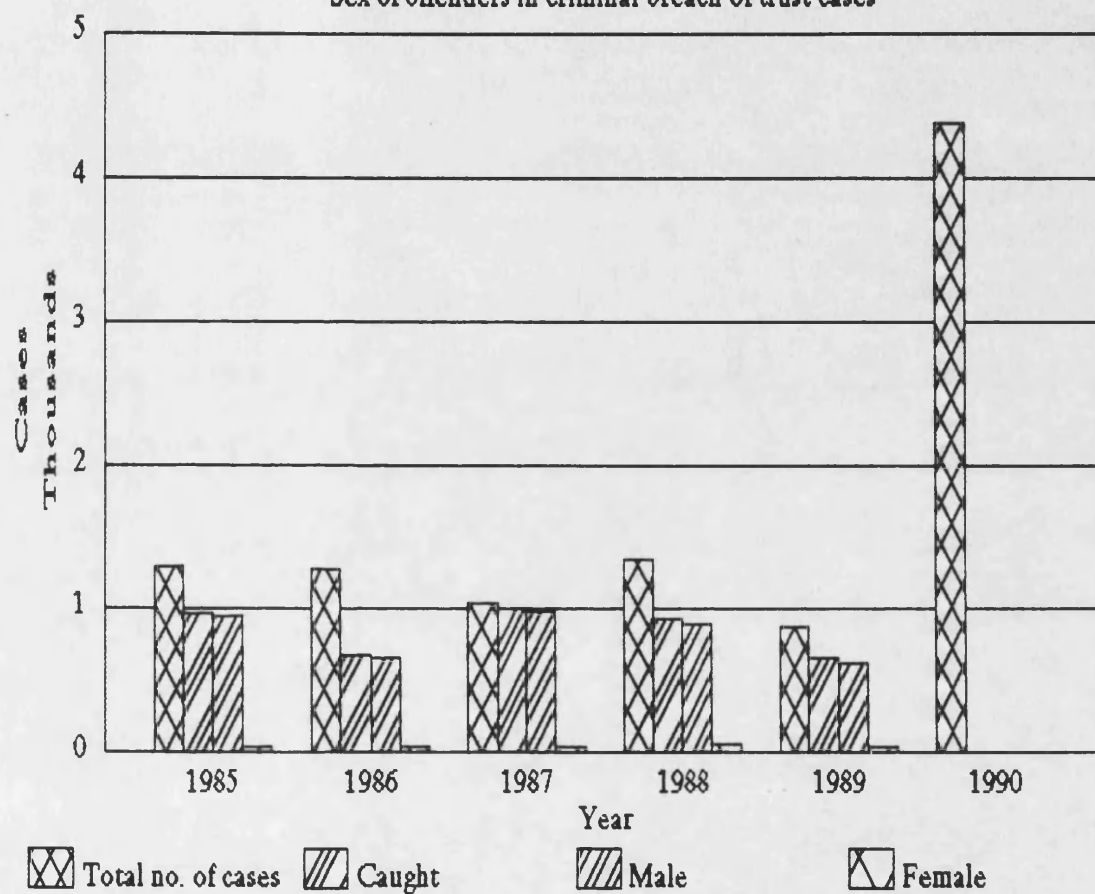
# Figure 3.2

Loss through criminal breach of trust in Malaysia



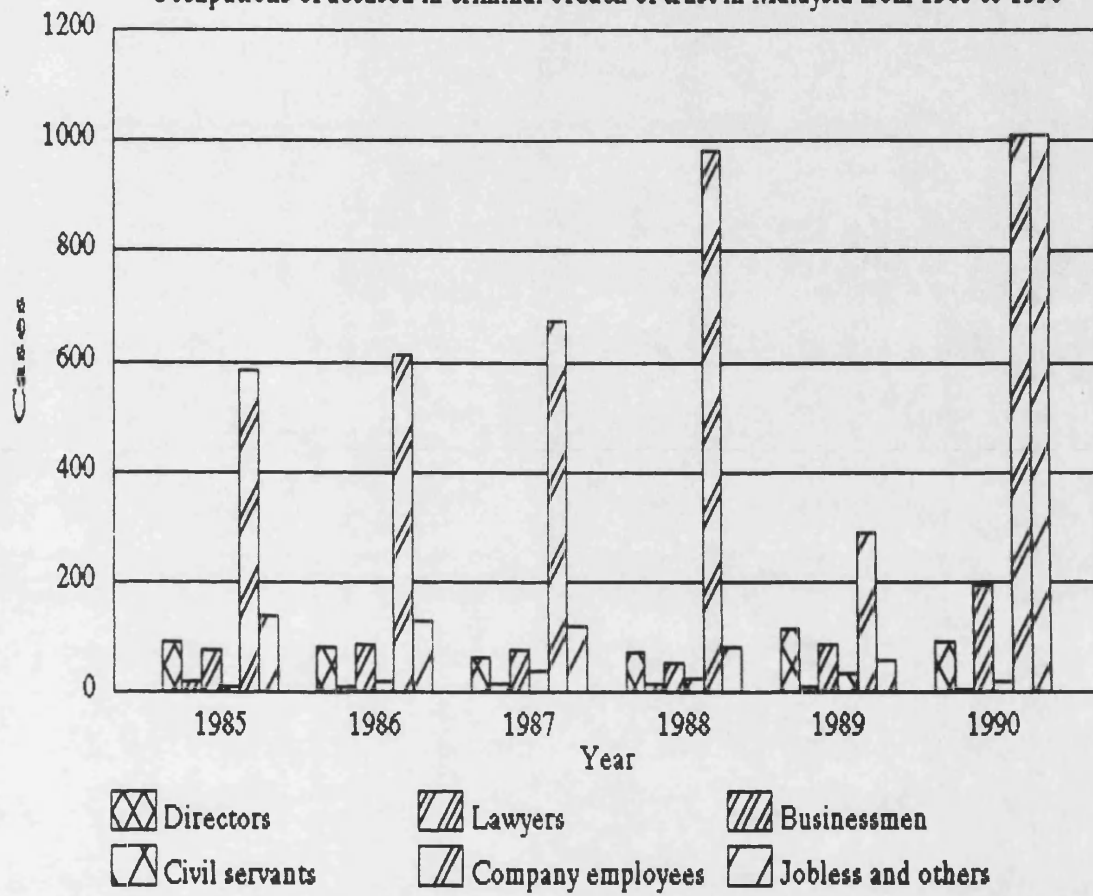
# Figure 3.3

Sex of offenders in criminal breach of trust cases



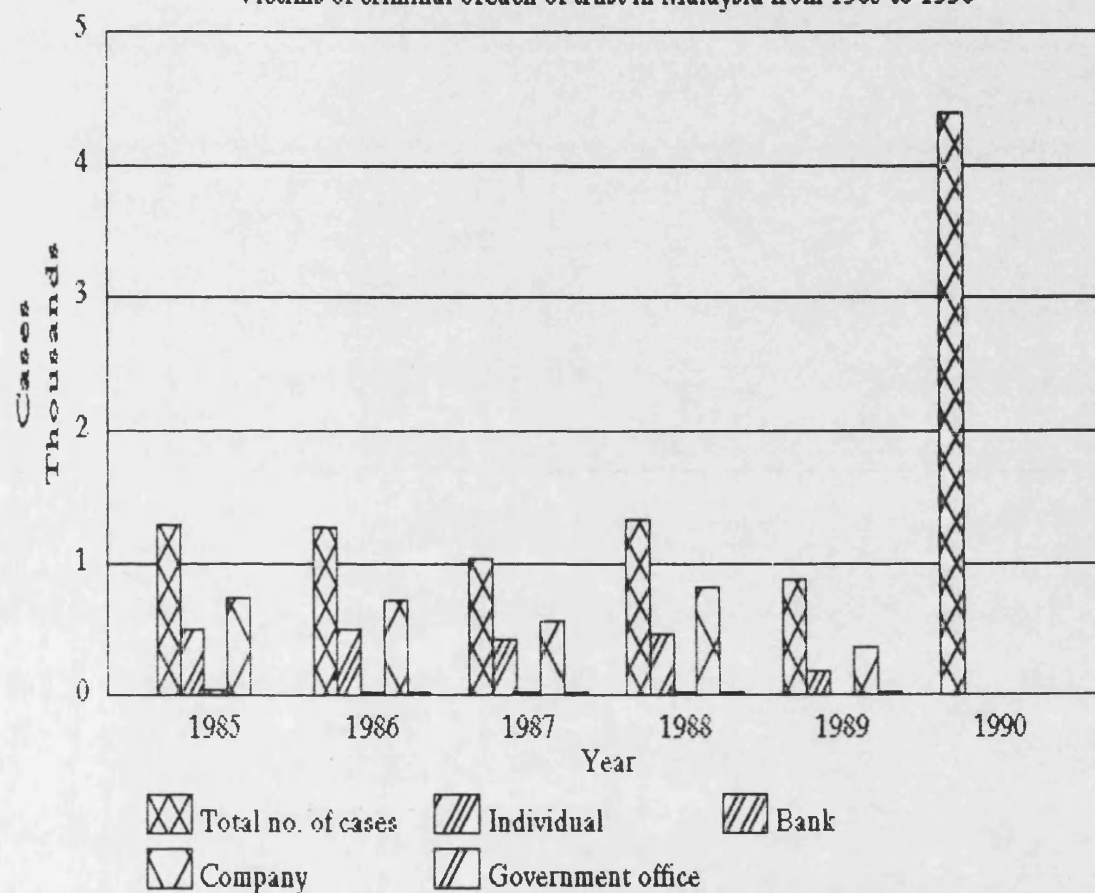
# Figure 3.4

Occupations of accused in criminal breach of trust in Malaysia from 1985 to 1990



# Figure 3.5

Victims of criminal breach of trust in Malaysia from 1985 to 1990



1986. After 1986, it started to decrease to M\$45.7 mil. in 1989 and then suddenly increased to M\$117.6 mil. in 1990.

Figure 3.3 shows that the majority of the criminal breach of trust offenders caught were males. On average the female offenders made up only 3.7% of the total offenders caught between 1985 to 1989. It should be noted that the number of cases where the offenders were caught was quite high from 1985 to 1989 i.e. 75%, 53%, 96%, 70% and 75% respectively of the total number of cases reported. Thus, on average, 74% of the number of cases being reported was caught.

Figure 3.4 shows the occupations of the accused. Company employees made up the bulk of the offenders every year from 1985 to 1990. On average, company employees made up 61% of the total accused between 1985 to 1990. The second highest came from the "jobless and others" group which made up an average of 17%. It should be noted that there was a sudden increase in this group in 1990 and the figure was the same as company employees. In that year, "jobless and others" as well as company employees made up 43% each of the total number of accused for 1990. Directors and businessmen shared the third position. Each made up, on average, 9% of the total number of accused. Civil servants made up 3% while lawyers made up 1% of the total number of accused between 1985 to 1990.

A majority of the victims of criminal breach of trust in Malaysia seemed to be companies as shown in Figure 3.5. Between 1985 to 1989, companies, on average, made up 58% of the total victims. The next largest group of victims was

individuals who made up on average 37% while the banks and Government offices made up 2% each.

#### **4. Reported fraud cases involving financial institutions**

From Table 6.5 and Figure 4.1, the reported fraud cases involving financial institutions were on the increase from 1978 to 1991. In 1978, there was only one reported case. By 1991, there were 14,199 reported cases. The increase between 1978 and 1986 had been rather steady i.e. from 1 to 92 cases. In 1987 (after the peak period of publicity of the BMF case), there was a sudden increase to 256 cases. The following year i.e. 1988, the number of cases dropped to 138. It increased suddenly again in 1989 to 676 cases. This was the year after Bank Negara, the central bank, introduced a formal code of ethics and also the year a new Banking and Financial Institutions bill was tabled before Parliament which gave the central bank more power to deal with all sectors of the financial system. There was also a very drastic increase from 1990 to 1991 i.e. from 778 cases to 14,199 cases. Within a year the number had increased by about eighteen times. As with the data on criminal breach of trust discussed in section 3 above, this sudden drastic increase by 1,825% makes the validity of the data questionable. This drastic increase was also matched by a drastic increase in the amount lost through fraud cases as shown by Figure 4.2. Although the amount had been increasing steadily throughout the years from 1978 to 1989 i.e. from M\$0.96 mil. to M\$18.16 mil., there was a sudden increase from M\$22.56 mil. to M\$614.79 mil. between 1990 and 1991.

Table 6.5

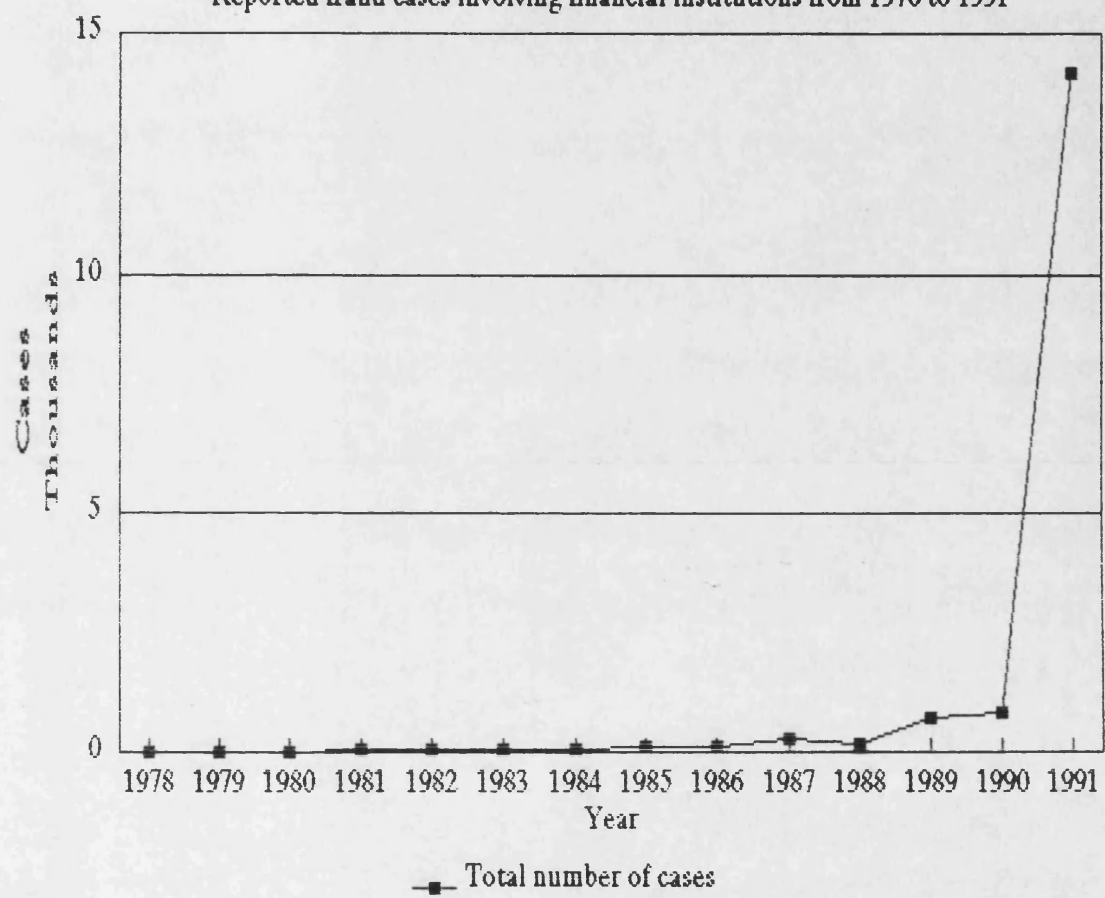
## Reported Fraud Cases Involving Financial Institutions

Year fraud occurred	Number of cases				Amount involved in millions (M\$)			Total
	Commercial bank	Finance company	Merchant bank	Total	Commercial bank	Finance company	Merchant bank	
1978	1	0	0	1	0.96	0.00	0.00	0.96
1979	0	0	0	0	0.00	0.00	0.00	0.00
1980	4	0	0	4	0.20	0.00	0.00	0.20
1981	19	0	0	19	2.50	0.00	0.00	2.50
1982	27	0	0	27	2.80	0.00	0.00	2.80
1983	35	1	0	36	4.80	4.88	0.00	9.68
1984	36	11	1	48	1.70	0.99	2.30	4.99
1985	51	28	0	79	6.60	4.38	0.00	10.98
1986	87	4	1	92	6.60	1.80	3.30	11.70
1987	245	10	1	256	21.92	2.92	0.00	24.84
1988	120	17	1	138	23.67	0.50	0.13	24.30
1989	624	51	1	676	10.98	7.13	0.05	18.16
1990	769	9	0	778	22.42	0.14	0.00	22.56
1991	14,181	18	0	14,199	610.7	4.09	0.00	614.79
Total	16,199	149	5	16,353	715.85	26.83	5.78	748.46

Source: Bank Negara Malaysia (the Central Bank)

# Figure 4.1

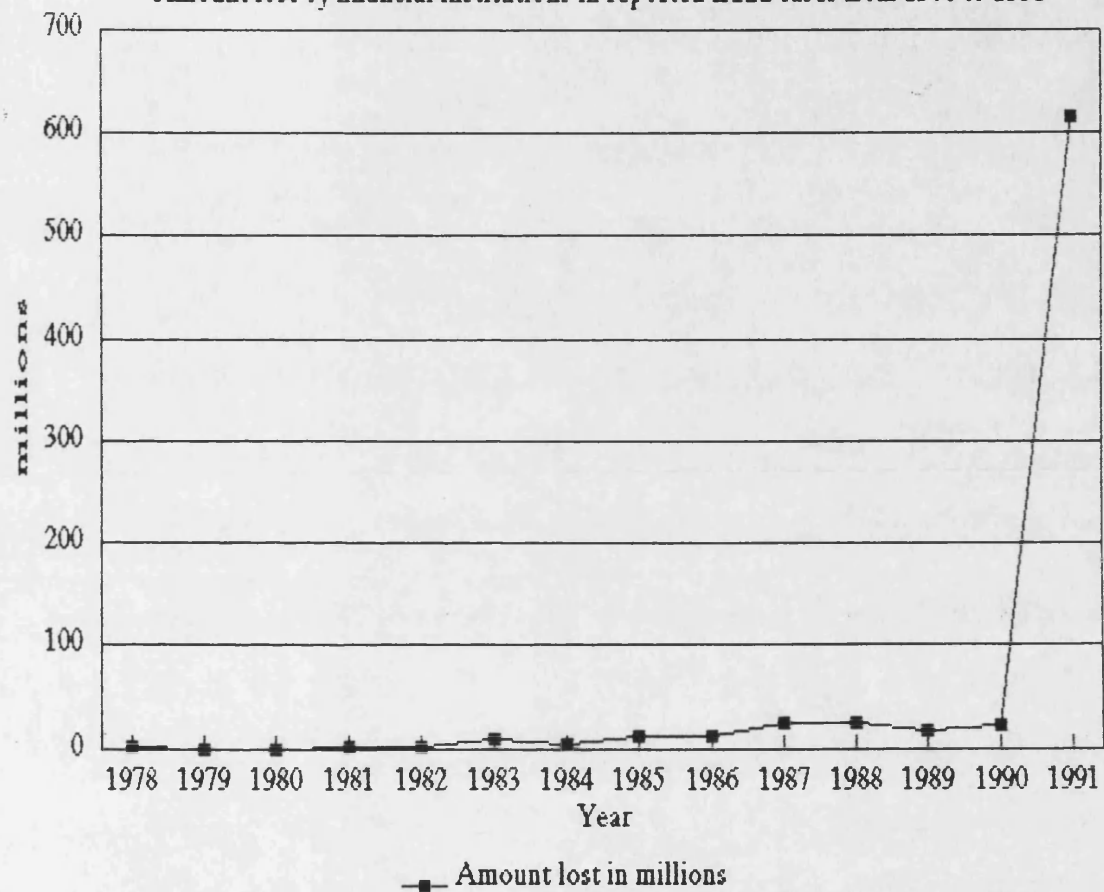
Reported fraud cases involving financial institutions from 1978 to 1991





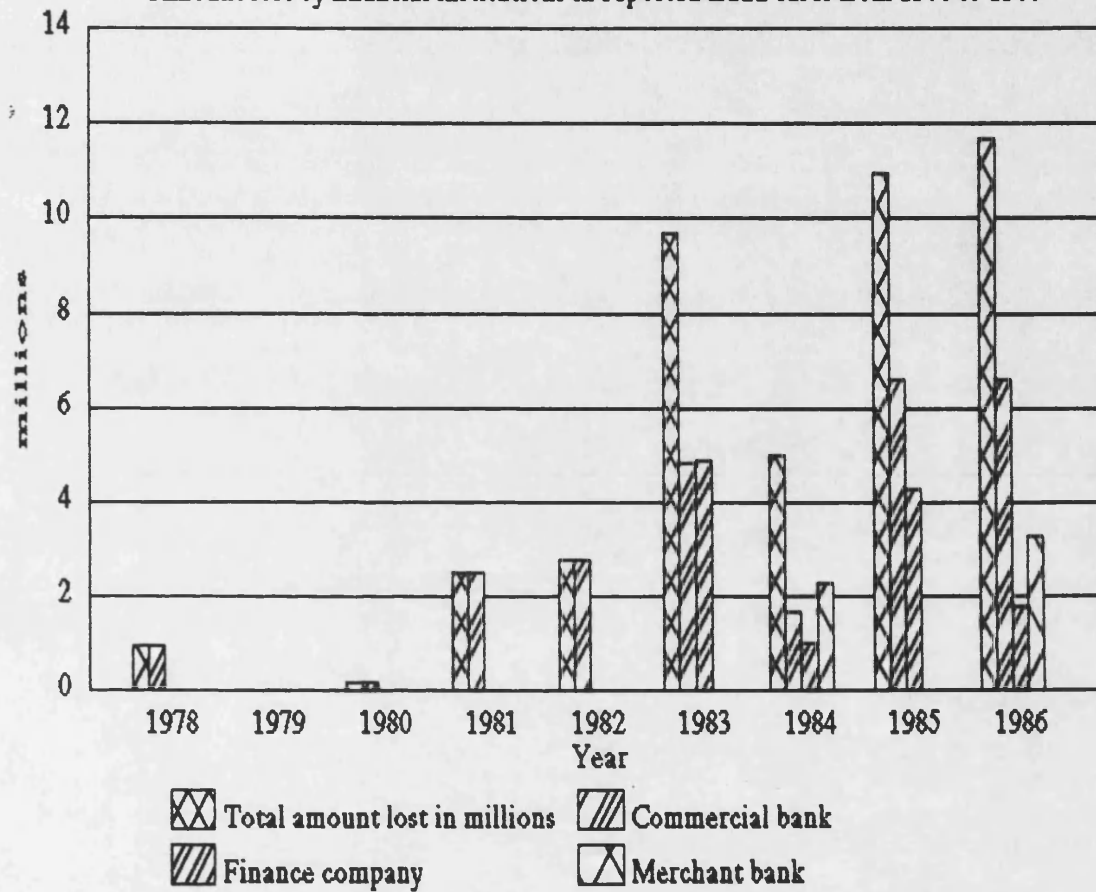
## Figure 4.2

Amount lost by financial institutions in reported fraud cases from 1978 to 1991



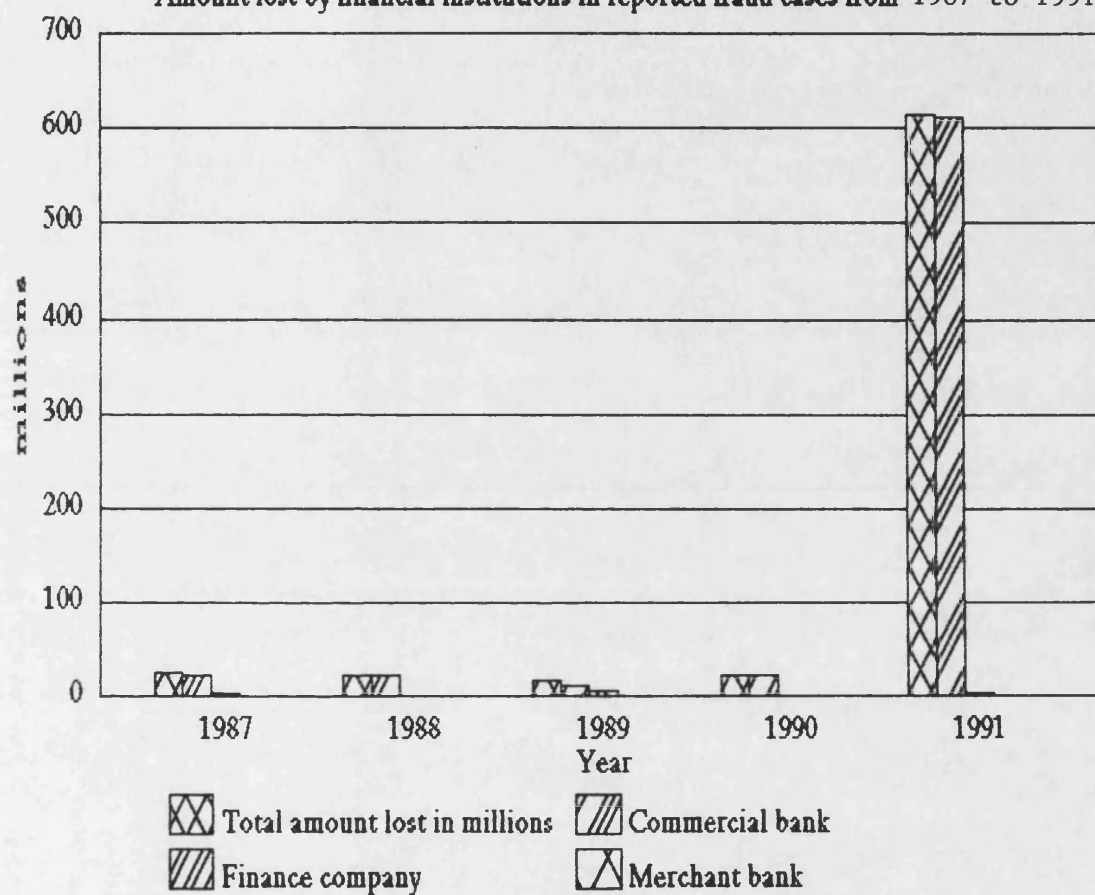
# Figure 4.3

Amount lost by financial institutions in reported fraud cases from 1978 to 1986



# Figure 4.4

Amount lost by financial institutions in reported fraud cases from 1987 to 1991



Commercial banks made up the largest group of victims. Out of a total of 16,353 cases reported between 1978 to 1991, 16,199 cases involved commercial banks which made up about 99.06% of the total number of reported cases (see Table 6.5). The next largest group of victims was the finance company which made up only 0.91% of the total reported cases. The last group of victims was the merchant banks which made up only 0.03% of the total reported cases. Therefore, it is not surprising that the commercial banks lost the most money through fraud cases as shown by Figures 4.3 and 4.4. However, there was one year, i.e. 1983, where the amount lost by 35 commercial banks was equivalent to the loss by one finance company. The amounts were M\$4.8 mil. and M\$4.88 mil. respectively. In 1984 and 1986, the loss incurred by two merchant banks was greater than the loss by 15 finance companies i.e. M\$5.6 mil. and M\$2.79 mil. respectively. The total amount lost by all financial institutions from 1978 to 1991 came up to M\$748.46 mil. (about £187 mil. at 1994 rate).

## **5. Corruption**

The data for corruption cases reported to the Anti-corruption Agency from 1968 to 1992 are divided into Tables 6.6 and 6.6.1 because of the way they were recorded. From these two tables and Figure 5.2, it can be seen that between 1968 and 1992, the total number of reports received varies every year with the highest number in 1982 (before the BMF scandal was publicised widely). It fell steadily between 1982 to 1988 i.e. from 10,983 to 6,791. It increased again

Table 6.6

Reports received, number of people caught and number of disciplinary reports on civil servants made by the Anti-corruption Agency from 1968 to 1986

Year	Reports received	Caught Public	Caught CS*	Total	Disciplinary reports on CS*
1968	6,155	157	59	216 (3.5%)	68
1969	3,895	99	156	255 (6.5%)	88
1970	6,376	115	67	182 (2.9%)	87
1971	4,550	151	57	208 (4.6%)	27
1972	3,422	131	50	181 (5.3%)	33
1973	3,399	132	62	194 (5.7%)	18
1974	3,544	101	70	171 (4.8%)	30
1975	4,457	45	78	123 (2.8%)	23
1976	5,912	47	102	149 (2.5%)	35
1977	5,587	23	62	85 (1.5%)	30
1978	6,139	64	81	145 (2.4%)	67
1979	8,462	42	86	128 (1.5%)	56
1980	6,827	43	76	119 (1.7%)	68
1981	7,394	82	157	239 (3.2%)	93
1982	10,983	102	155	257 (2.3%)	143
1983	8,434	96	124	220 (2.6%)	149
1984	7,769	143	214	357 (4.6%)	84
1985	6,790	79	183	262 (3.9%)	91
1986	6,666	96	174	270 (4.1%)	151

\* Civil servants

Source: The Anti-corruption Agency, Kuala Lumpur, Malaysia.

Table 6.6.1

Information received and actions taken by the Anti-corruption Agency in Malaysia from 1987 to 1992

	1987	1988	1989	1990	1991	1992
1. Information and complaints received	<u>6968</u>	<u>6791</u>	<u>8217</u>	<u>7387</u>	<u>6789</u>	<u>7890</u>
1.1 Investigations taken	3101 (45%)	3110 (46%)	3445 (42%)	3243 (44%)	3407 (50%)	3617 (46%)
1.2 Notice sent to respective depts. for further actions	2310	2284	3220	1381	1168	1256
1.3 No basis for further action	1453	1406	1549	1435	1226	1735
2. Caught	<u>291</u> (4.2%)	<u>321</u> (4.7%)	<u>255</u> (3.1%)	<u>239</u> (3.2%)	<u>226</u> (3.3%)	<u>332</u> (4.2%)
2.1 Civil servants	156	179	154	151	118	191
2.2 General public & private sector employees	134	139	101	87	103	140
2.3 Politicians	1	3	-	1	5	1

Source: Anti-corruption Agency, Kuala Lumpur, Malaysia.

# Figure 5.2

Complaints received by the ACA and the number of cases caught

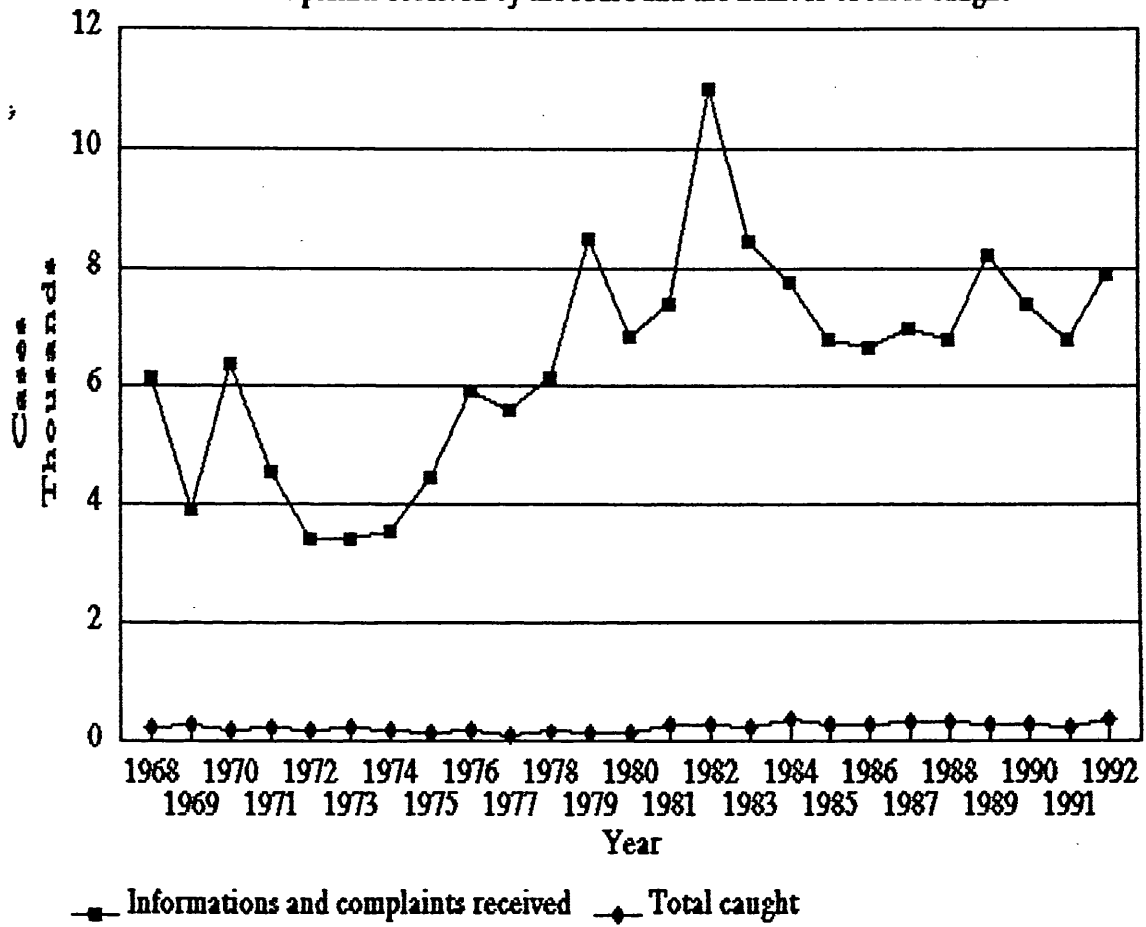


Table 6.6.2

Disciplinary reports prepared by the Anti-corruption Agency  
for civil servants in Malaysia from 1987-1992

<u>Year</u>	<u>Categories of Civil Servants</u>				<u>Total</u>
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	
1987	18	12	23	32	85
1988	39	14	58	39	150
1989	12	4	36	48	100
1990	31	25	66	73	195
1991	13	8	25	59	105
1992	24	19	28	57	128

Source: Anti-corruption Agency, Kuala Lumpur, Malaysia



quite significantly the following year i.e. 1989 to 8,217 complaints. This was during the period when the Anti-corruption Agency held more awareness of corruption activities for the public.

Table 6.6.1 shows that the investigations carried out by the Anti-corruption Agency were relatively high which varies between 42% to 50% of total complaints between 1987 and 1992. Although the reports received were high, the actual number of offenders caught was quite low. The percentage caught was on average only 3.6% of the total number of reports received. The total number of civil servants caught between 1968 to 1992 was higher than the public i.e. 2,962 cases for the former group and 2,452 cases for the latter group. Between 1987 and 1992, 11 politicians were also recorded in the total number of offenders.

The Anti-corruption Agency also sent disciplinary reports on civil servants who were suspected of corruption as well as notices for all others who were under suspicion to their respective departments for further action to be taken (see Tables 6.6 and 6.6.1). Between 1987 to 1992, out of the total number of reports received, the percentage of notices sent to the respective departments was 33.2%, 33.6%, 39.2%, 18.7%, 17.2% and 15.9% respectively. It should be noted that although the percentage was relatively high per year, it declined steadily between 1987 to 1992. The average percentage of notices sent to the respective departments between 1987 to 1992 was 26.3%. From Table 6.6.2, it could be seen that disciplinary reports prepared by the Anti-corruption Agency for civil servants for further action to

be taken were mainly for lower rank civil servants i.e. categories C and D. Fewer disciplinary reports were submitted for categories A and B civil servants who were of higher ranks.

## **6. Interpretation of data**

From the data and information given above, how can they be interpreted? In Field's work on "Trends in crime and their interpretation", a Home Office research study on post war England and Wales published in 1990, it was found that economic factors had a major influence on trends in both property and personal crime. His definition of property crime included fraud cases. On the issue of property crime, he said, "'Real' (after inflation) annual growth in personal consumption was found to be inversely related to growth in recorded property crime. Thus, in years when people are increasing their spending very little - or even reducing it, property crime tends to grow relatively quickly, whereas during years when people are rapidly increasing their expenditure, property crime tends to grow less rapidly or even fall" (Field, 1990; 5). He went on to say that economic factors in general and consumption growth in particular appeared to be among the most important determinants of fluctuations in the growth of property crime in industrialised countries although he did not dispute that there were many other factors which played a part, too. For example, he argued that involvement in crime was more common among young males than among women or older men (Field, 1990; 40). He compared his findings in Wales and England

with those in the United States, France, West Germany, Japan and Sweden. He found a similar pattern emerging in England, Wales, the United States, Japan and France over the same period. However, a different pattern was obtained in West Germany and Sweden, although some relationship between consumption and crime was evident. The conclusion was that there was a strong inverse relationship between the annual growth rate of personal consumption and the annual growth rate of property crime, especially in industrialised countries, but this was not universal. Field did not give any concrete reason why there was such a relationship between personal consumption growth and property crime. The inference to his analysis could be that property crime is consumption by other means. He also noted that his study should not bear directly on explanations of the level of crime, but rather for the forecasting of future levels of crime on the basis of a combination of predicted future economic and demographic circumstances.

Basing myself on Field's study, I would like to see whether similar trends can be attributed to the Malaysian case<sup>1</sup>. The next section will be a brief discussion on the economy of Malaysia with particular reference to its private or personal consumption growth. After that, a comparison will be made with the data on commercial crime, criminal

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<sup>1</sup>I have contacted Simon Field personally at the Home Office in London to enquire if his study would be applicable to the type of data I have. He found no reason why his study could not be applicable to my data although it dealt mainly with theft and burglary. He noted that perhaps the occupations of the people and the age group involved in fraud might be different from the main issue he was looking at.

breach of trust, fraud in financial institutions and corruption as discussed above.

During the period when Malaysia achieved its independence in 1957 to 1969, the gross national product in Peninsula Malaysia or West Malaysia had increased by 86%. The actual rate of growth for this period was 5.3% per annum (Cho, 1990; 17). This growth was considered to be one of the better ones in South-east Asia and among the developing countries. During the 1970s, with the introduction of the New Economic Policy, as discussed in earlier chapters, the growth rate was 7.8% per annum (Ariff, 1991; 1). In the 1980s, the average rate of growth decreased from 7.9% to 5.6% between 1980 and 1982, rising steadily to 7.6% in 1984, but falling sharply to 2.8% in 1985 (Cho, 1990; 18). Malaysia entered into a deep recession in the mid 1980s. The fall in growth rate was due to weak world demand for commodities. However, the economy picked up again in the late 1980s with high gross domestic product growth rates of 5.4%, 8.9% and 8.8% in 1987, 1988 and 1989 respectively. In 1990, gross domestic product growth exceeded 10% (Ariff, 1991; 1). As with private consumption, the trend is as listed below.

**Table 6.7**  
**Percentage of average annual growth rate of private consumption; 1970 constant prices**

<u>1965-1970</u>	<u>1971-1975</u>	<u>1976-1980</u>	<u>1981-1985*</u>	<u>1986-1990*</u>	<u>1991-5</u> (target)
5.3	5.7	9.7	3.7	6.4	6.4

\* 1978 constant prices

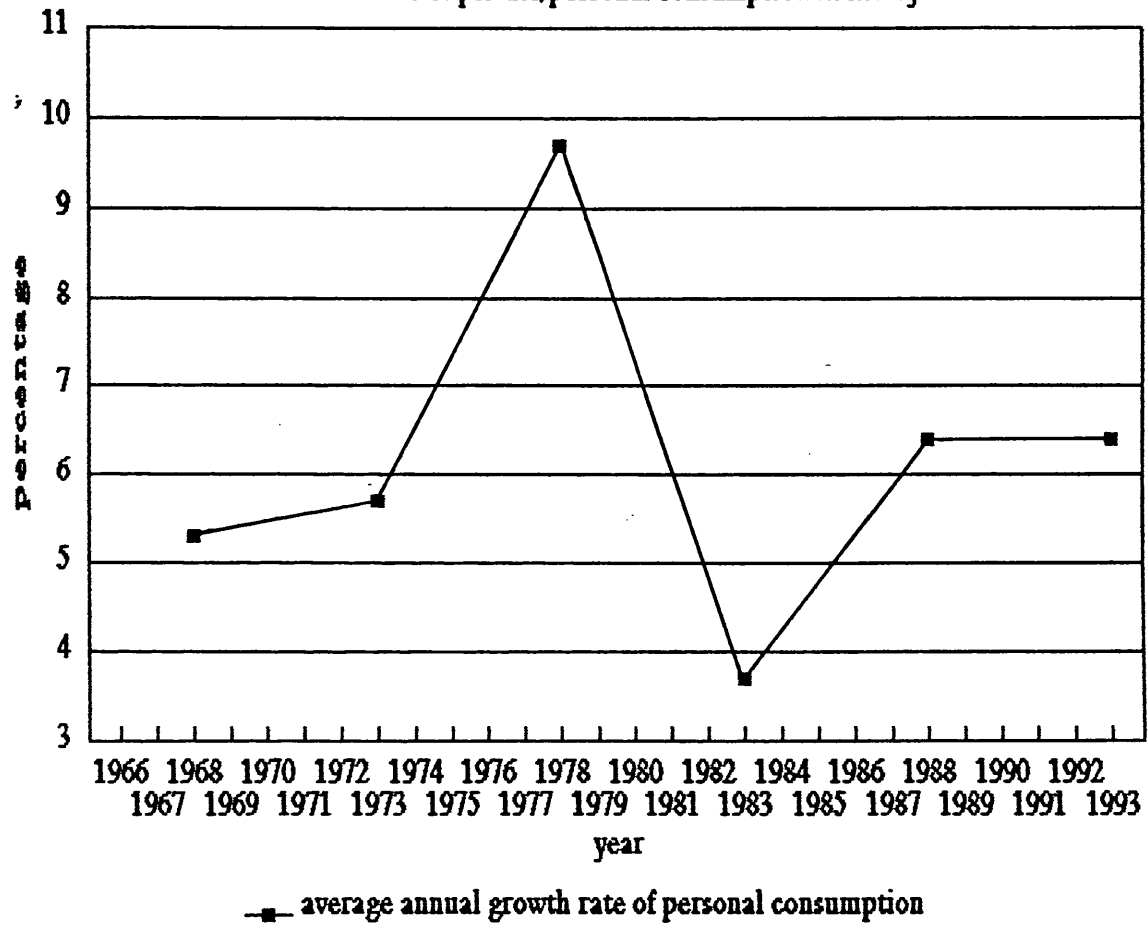
Source: Economic Planning Unit, Second, Fourth and Sixth Malaysia Plan.

From the table above and Figure 6, it could be seen that private consumption was at its peak in Malaysia in the late 1970s. It began to decline in the early 1980s when Malaysia was affected by the world wide recession. It began to increase again in the late 1980s. If Field's study is to be a basis of comparison, the property crime rate should be down in the late 1970s and increase again in the early 1980s. It should decrease in the late 1980s and should continue to do so in the early 1990s because of the economic boom that Malaysia is facing.

From the limited data I have obtained as compiled in Figure 6.1, it can be seen that corruption, commercial crime and fraud in financial institutions were down in the late 1970s. They began to accelerate in the early 1980s. This trend seems to confirm Field's findings. However, his findings cannot be applied for the late 1980s and early 1990s. According to Field's study, the period of late 1980s to early 1990s should see a decline in property crime rate. But, in the Malaysian case, there was a rapid increase in the rate of fraud in financial institutions and criminal breach of trust cases. However, I would be cautious in dismissing Field's findings because the data I obtained are questionable as explained in the earlier sections of this chapter. This is in relation to the drastic increase in fraud cases in financial institutions between 1990 and 1991 (Table 6.5) i.e. from 778 cases to 14,199 cases, an increase of 1,825% within a year. The increase in criminal breach of trust cases between 1989 and 1990 (Table 6.4) was also too drastic i.e. from 870 cases to 4,388 cases, an increase of

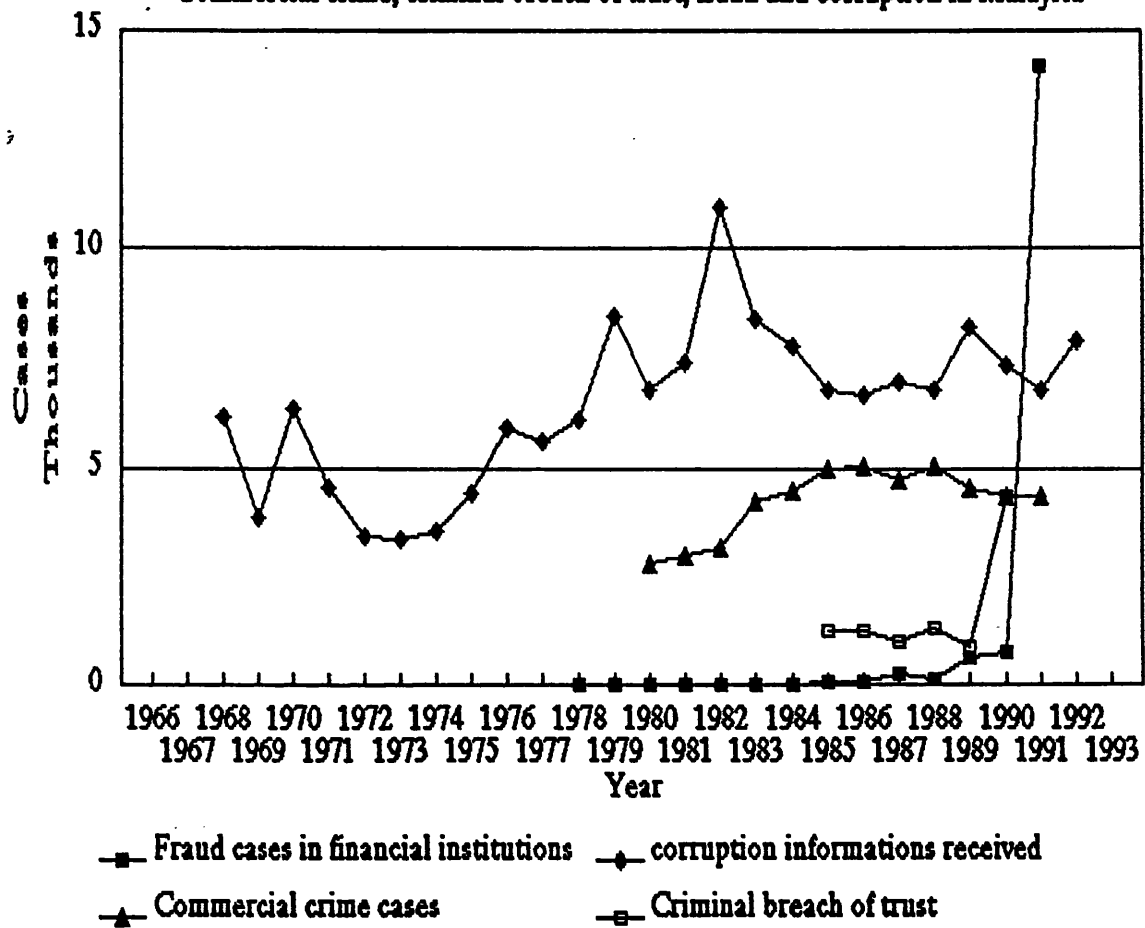
# Figure 6

Growth rate of private/personal consumption in Malaysia



# Figure 6.1

Commercial crime, criminal breach of trust, fraud and corruption in Malaysia



504% within a year. There could be problems with the reporting of these cases.

As for corruption cases, the rate decreased in the late 1980s. It started to increase slightly again in the early 1990s. There is no conclusive evidence to dismiss Field's study.

As for the commercial crime cases, the figures were low in late 1970s. They began to accelerate in the early 1980s. They reached a peak in mid 1980s. In the late 1980s and early 1990s, they began to decrease. Field's study seems to fit the commercial crime picture.

In conclusion, Field's study has some implications for the Malaysian property crime scene i.e. there is an inverse relationship between personal or private consumption with certain property crime. However, if the reporting of fraud cases in financial institutions and criminal breach of trust cases is without problems, we would expect an increase in property crime in the early 1990s, contrary to Field's study. As stated above, I am not able to dismiss Field's theory because there is doubt on the data I have obtained.

If Field's study is to be used to predict the future of the property crime rate in Malaysia, we should contemplate a fall in property crime in the 1990s as the country is enjoying an economic boom at the moment and is predicted to do so throughout the 1990s. The Malaysian Government has planned to achieve the status of "Newly Industrialised Country" by the year 2020. This goal is commonly referred to as "Vision 2020". Policies planned for this goal are geared towards greater economic progress. With greater economic



progress, the private consumption growth rate is predicted to increase. Thus, the property crime rate should go down in the next couple of decades. Malaysia should have fewer property crime problems in the near future. However, contrary to this prediction, the data seem to suggest an increase of fraud cases in financial institutions, criminal breach of trust and corruption. There are three possible reasons for this trend. Firstly, the height of the BMF scandal was in the mid 1980s when the public were outraged at the large amount of money that went missing. This might have prompted all institutions to be more vigilant and careful in their dealings. In doing so, more offences were uncovered. Secondly, Bank Negara, the central bank, played a more active role after the BMF scandal by issuing a formal code of ethics in October 1988. A new Banking and Financial Institutions Bill was also tabled before Parliament in June 1989 which gave Bank Negara the power to act quickly in future instances of financial distress in all sectors of the financial system. Lastly, in the late 1980s, the Anti-corruption Agency played an active role in holding activities to educate the public on the ill effects of corruption as noted in section 1.2 of this chapter. These three reasons may have a considerable impact on the increase in the rate of fraud cases in financial institutions, criminal breach of trust and corruption in Malaysia.

The next chapter will be on preventing and combating fraud. In this chapter, I will try to give some suggestions of what can be done to help lessen employees fraud.

## **Chapter 7**

### **Combating And Preventing Fraud**

#### **Introduction**

In 1979, at the United Malay National Organisation (UMNO - the dominant ruling coalition party in Malaysia) General Assembly, the then Prime Minister, Tun Hussein Onn, said, "a country will be destroyed if its leaders are dishonest, untrustworthy and corrupt" and expressed the hope that the Bank Rakyat fiasco (see chapter 5) would be a "bitter lesson to other Government institutions and agencies including companies and subsidiaries set up by the Government" (Lim, 1986; 41). Ironically, at the time he was warning the country against fraud and corruption and the ruin they could bring to the nation, the BMF scandal, which was twenty times bigger than the Bank Rakyat scandal, was just about to take place. After the BMF case, the Deposit-taking Co-operatives scandal broke out. One would assume that with the introduction of new and amended laws and procedures subsequent to these scandals, the problem would have been minimised or controlled. Unfortunately, they are not the last we shall hear of major financial scandals in Malaysia.

On 6 October 1989, Bank Bumiputra Malaysia Berhad (BBMB) announced a M\$1.22 bil. increase in bad-debt provisions for loans made prior to 1985. The huge provision turned a M\$168 mil. operating profit for the year ended 31 March 1989 into a loss of M\$1.06 bil.. While BBMB did not disclose any detail, analysts said that roughly half of the

amount provided was probably related to two major Kuala Lumpur property developments:

1. the Putra World Trade Centre, an UMNO-owned convention centre and office complex in Kuala Lumpur. In September 1983, BBMB lent M\$200 mil. for the project and since that time, according to documents released in a legal suit, UMNO had neither repaid any principal nor made interest payments;
2. the Shahzan Tower, a Kuala Lumpur office block owned until October 1989 by the Pahang State royal family. Analysts said that unpaid debts resulting from a M\$50 mil. loan for the project early in the 1980s now amount to roughly M\$120 mil..

(FEER, 19/10/1989)

On 19 October 1989, it was reported in the "Far Eastern Economic Review" that, for the second time in five years, the entire shareholder capital of BBMB had been wiped out as a result of imprudent property lending earlier in the decade (FEER, 19/10/1989). These lendings were domestic lendings, including loans associated with UMNO Baru, the dominant party in Malaysia's ruling coalition. Critics of BBMB said that its loans had been made chiefly to politically connected individuals. Many of these individuals had indirect links to the Prime Minister's UMNO (FEER, 31/1/1991). Bankers said that BBMB's lending abuses appeared to increase under Basir Ismail's leadership, a corporate scion of the ruling party who had long been identified with

the then Finance Minister, Daim Zainuddin, and other powerful people in Malaysia. As with the BMF scandal, Petronas, the national oil company, had again to bail BBMB out of this problem.

In October 1989, financial analysts pointed out that Petronas had to bail out BBMB a second time with a M\$982 mil. injection after the bank was forced to record the M\$1.06 bil. loss resulting from late interest payments on property loans made from 1985-86 (FEER, 31/1/1991). The financial strain wiped out BBMB's shareholders' funds and led to the acquisition by Petronas of most of the bank's shares that the oil company did not already own. Some bankers and financial analysts believed that the bank's overall financial position had not improved despite the Government-sponsored rescue efforts. Petronas' association with BBMB had cost the oil company about M\$1 bil. when the difference between the amount it injected into the bank as fresh equity and the value of the share transaction with the Government was taken into account (FEER, 31/1/1991).

The banking and financial system seems particularly prone to fraud. The obvious reason is that the institutions deal directly with a highly irresistible and liquid commodity, i.e. money. Moreover, their transactions involving financial assets and liabilities are just a matter of book entries or the information is stored in a computer rather than the exchange of physical assets. It is not difficult to put in a wrong entry with the stroke of a pen or a key of the computer. Transactions become complicated when they are of an international nature involving foreign

currencies. In these international transactions, there are again no actual physical movements of funds as they are recorded like the local transactions. International transactions can take place 24 hours a day and seven days a week. These factors make things more complicated and thus increase the difficulty of controlling fraud.

The French economist and Nobel prize winner, Maurice Allais noted in 1989 that more than US\$400 bil. was exchanged every day on the foreign exchange market while the flow of commercial transactions was only about US\$12 bil. (Calavita & Pontell, 1992; 254). Allais named the finance industry in the United States the "casino economy".

The FBI figures in the United States indicated that bank losses due to fraud were five times greater than losses through robberies and violence (Lee, 1992; 4).

From the case studies in the earlier chapters as well as those we read in the newspapers every day, the conclusion must be that there is no system or procedure which can eradicate fraud and corruption totally in any organisation. The only alternative is to try to control and minimise them. Fraud and corruption will occur as long as there is the opportunity to commit them. Opportunities present themselves when the chances of detection are remote, the control or supervision system is inadequate and where moral stigma is absent. The opportunities are also greater higher up the political or social and economic order where the chances of detection are fewer. As the Inspector General of Police in Malaysia said, "Commercial crime is a crime of opportunity because their positions in business, profession or

employment afford them the opportunities (Omar, 1990; 19).

There is thus a need to identify the weaknesses in the structure of the institutions and society which created the opportunities and temptations for fraud and corruption to occur. As Goldstock put it,

"Corruption, like disease, is not monolithic. There is no one cure. We need to look at individual maladies, or individual types of corruption. Indeed, in each case, there should be a three part process in searching for means of control. First, the identification and description of symptoms. Second, the analysis of the mechanisms through which the integrity of the system is compromised. Finally, based upon that analysis, the development and implementation of a program of treatment using appropriate remedies. Ultimately, the treatment program may require a combination of preventive, structural and/or institutional measures."

(Goldstock, 1989; 71)

Huntington observed that the branches and subsidiaries of major organisations which had a strong central control had a low risk of fraud while autonomous operations remote from a weak central authority had a high risk. The risk increased with the complexity of an organisation and with the geographical spread of its subsidiaries and branches and their physical and cultural distance from head office. He also suggested that the opportunities for concealment of fraud engineered from the centre were increased if a network of branches, subsidiaries and related entities existed. These autonomous branches or subsidiaries could, for example, be used by directors or top management to circumvent management control at operating level (Huntington, 1992; 6). Thus, in order for opportunities to be minimised, the following must be present:

- a. an effective internal control system;

- b. an efficient and honest management group which would enforce this internal control system.

The two factors are important and they go hand in hand because an effective control system will be rendered useless if not enforced properly by the management group.

The two factors above are applicable to fraud at the organisational level. What about large scale fraud at the national and international level with the involvement of politicians and members of the higher class? To fight this type of fraud effectively, the following set of factors must be present: firstly, there must be some knowledge of who is corrupt and who is not. Secondly, there must be cooperation among the members of society at all levels. These include the legislators, the law enforcement professionals, the auditors, the directors, the management and staff, the general public as well as the politicians and elite members. Thirdly, changes are needed at both the political and social order. Fraud and corruption must be seen as wrong and damaging by all members of the society and there is a genuine effort to try to prevent them by making relevant changes to the political and social system. It is not enough just to get rid of politicians who are corrupted when they are caught in a financial scandal and replace them with other people who, in turn, may be convicted of the same offence in future because the opportunities and the corrupt system are still there. Fourthly, there must be freedom from fear of reprisal and lastly, there must be a belief that actions will be taken following complaints.

The conditions conducive for fraud to take place can be divided into two groups, the internal or individual factors and the external or social factors. "Internal factor" refers to the personality of the individual or personal reasons, for example, financial problems, family commitments, etc. "External factor" refers to factors which are outside the individual personality and which made it possible and conducive for fraud and corruption to take place. Some writers called these factors the "environmental factors". Examples of these environmental factors are the structure of the organisation or society, the cultural institution, the political system, the legal system, etc..

In chapter 4, the external factors for the problems of fraud in Malaysia were divided into micro factors and macro factors. In this chapter, the factors which prevent fraud will also be divided into micro and macro factors. The micro factors refer to the conditions inside the organisation which will prevent fraud and the macro factors relate to the Malaysian social and political environment. The next section of this chapter will be a discussion of the micro preventive factors of fraud and corruption. It should be noted that the preventive measures here are suggested with banking and financial institutions in mind. However, there is no reason why these measures cannot be adopted for other institutions.

#### **1. Micro-level of prevention**

Before discussing the preventive measures in detail, I would like to look briefly again into the problems of fraud. These problems are summed up clearly by two well qualified



persons in the area of fraud prevention.

According to Ishak Tadin, the Auditor-General of Malaysia, the failures of some of the Malaysian public companies and agencies had been due to:

1. Lapses in their management;
2. Lapses in their systems of control in general;
3. Blatant disregard of moral and corporate ethics.

The Auditor-General defined corporate ethics here as professional standards of conduct of the people in an organisation which ranged from personal behaviour and morality to managerial accountability in the stewardship of funds entrusted to an authorised person.

(Tadin, 1990; 1-2)

Lee, Manager of the Examination Department II in Bank Negara Malaysia (the central bank), in his review of the fraud cases reported to the central bank, disclosed that frauds were mainly caused by the following:

- a. Non-compliance of internal procedures by officers and staff;
- b. Negligence of officers authorising transactions;
- c. Lack of dual control or non-segregation of duties;
- d. Lack of supervision by supervisory staff;
- e. Staff and officers were not subjected to job rotation or required to take leave;
- f. Laxity of control over security documents and important records;
- g. Laxity of control over dormant accounts;

- h. Inadequate audit coverage or absence of internal audit functions on sensitive areas of operations;
- i. Registers were not kept or poorly maintained;
- j. Infrequent reconciliation or non-reconciliation of bank accounts;
- k. Surprise checks were not conducted on cash holdings and other valuables.

(Lee, 1992; 7)

In any organisation, an efficient internal control system seems to be the most important safeguard against fraud. Thus, any system of internal control should consider the following:

#### **1.1. Efficient, accurate and accountable reporting system**

A proper accounting system can exist only when the records of transactions are properly kept. From his experience in auditing Government's and statutory bodies' accounts, the Auditor-General of Malaysia observed that those which were prone to malpractice had the problems of inadequate disclosure of correct and factual information and an inadequate internal control system (Tadin, 1990). Transactions should be made and recorded in accordance with specified procedures. There should be no allowance for any discretionary transactions to be made outside these procedures unless it has been brought to the attention of the relevant decision-making committee. This is particularly important where the dispensing of loans in financial institutions is concerned. The members in this decision-

making committee must be independent members i.e. they are not members from the Executive Board to whom the loan application is given or any member whose opinion may interfere with the exercise of independent judgement, for example, a family member. The financial background of the applicants, especially where large sums of money are involved, should be checked thoroughly. It should be a policy of the organisation not to conduct business with customers who fail to provide evidence of their identity. There should be proper lending guidelines to ensure that loans are not concentrated on one person or organisation. Collateral involved in the transactions should also be properly secured before dispensing these loans. The records should be maintained in sufficient detail in order to reflect the nature of the transactions. How the transaction decision was made and who was in charge should also be recorded for the purpose of accountability.

All these measures are meant to safeguard the true financial position of the financial institutions as well as to expose any irregularities.

## **1.2. Segregation of duties**

Key functions like the authorising, recording, accounting and custody of assets should be segregated. This is to prevent one person dominating a transaction from beginning to end. If this is allowed, the opportunity for committing and concealing a fraud is great. The segregation of duties will provide checks and balances whereby the work of one person can be verified by a second person. Moreover,

this will also ensure accountability by all sections and levels of the organisation as there is no diffusion of responsibilities. This also prevents the passing on of responsibilities and 'scapegoating' when things go wrong. As Croall pointed out, there were classic instances of serious corporate offending which revealed a complex web of interlocking responsibilities and cover-ups at all levels which combined to conceal where responsibility ultimately lay (Croall, 1992; 63). Clinard argued that the immensity, the diffusion of responsibility and the hierarchical structure of large corporations all foster conditions conducive to organisational deviance (Clinard, 1983; 17).

### **1.3. Effective, sensible and regular supervision**

Financial scandals are costly affairs. From the BMF case, it can be seen that fraud of a financial nature usually occurs in a round about manner. The money acquired from loans usually passes from one destination to another before coming back to where it started. By checking and double checking and making sure that all sections of the organisation are accountable for their actions, the problem can be traced at the early stages. As the saying goes, "Prevention is better than cure". Thus, the management members should keep reasonably close, regular and effective checks and supervision on the overall operations of the institution. This is to ensure that the proper procedures have been carried out throughout the firm and also to detect problems and irregularities arising. If the organisation has branches and subsidiaries in other parts of the country or

even in other parts of the world, the management members at the head office should ensure that they know all the operations that are taking place at the other end. They should also make sure the management members at the branches or subsidiaries are following the procedures set out and that everything is in order. However, these checks and supervision should be carried out sensibly so as not to be antagonistic to the employees.

On top of making independent checks and supervision over the performance of employees, management members should also:

1. monitor, sometimes on a month-to-month basis and in certain operations, on a daily basis, the profit and loss account of the financial institution in order to pin-point financial problems and risks faced by the institution;
2. conduct regular management review on the effectiveness of its policies and procedures;
3. set up an independent audit and examination committee consisting of non-executive directors;
4. ensure that the internal auditors have access to the audit committee and to top management so that they could report any problem that is found.

#### **1.4. Sound personnel policies**

After the BMF case, various amendments were made, especially to the Banking Act and the Companies Act, to prevent future fraud. However, these amendments did not prevent abuse and mismanagement from taking place again. As

the Committee of Enquiry members concluded, "Controls do not in themselves ensure healthy business climate and public confidence in corporate management, but even more important is the personal quality and integrity of persons entrusted with the responsibility of controlling and managing corporations on behalf of the shareholders and depositors" (Committee of Enquiry, 1986; 942).

A good internal control system will work even better if the employees are competent and honest. Although there are no hard and fast rules to determine which applicant for a particular position is honest and efficient, certain measures could be taken at the recruitment stage to weed out potentially unsuitable applicants. For example, due attention should be given to character references and past employment records. Once recruited, Lee suggested that management members should also keep a vigilant watch on their employees for vices, such as drug addiction, gambling or a penchant for luxuries beyond a person's means as failure to observe these was as good as leaving the door open to theft (Lee, 1992; 42). Levi suggested that fraud prevention measures might involve educating colleagues and internal security to watch out for and enquire into the circumstances of employees who were living in a style far in excess of their salaries. Several defrauded firms had allowed employees on modest salaries to go on driving new Porsche cars and taking expensive holidays without conducting any enquiry or more than superficial one into how they could afford this (Levi, 1988; 13).

In order to encourage employees to blow the whistle on

their colleagues if they find any malpractice, the authority in the organisation must reassure them that their job will be secure. It will encourage them further if they are to be given an additional reward or promotion. Their evidence would be followed up and an investigation would be carried out by the proper authority in the organisation. Great care should be taken not to reveal the identity of the whistle-blower in order to protect his or her life. Of course there is always the possibility that there may be malicious allegations. The possibility will be slim because of the danger inherent to the whistle-blower's life. Moreover, the whistle-blower's identity is known to the authority in the organisation.

If the identity of the whistle-blower is revealed, the organisation must also offer him or her whatever protection is possible against any threat to his or her life. If the organisation gives a positive image towards whistle-blowing, then employees would not fear reporting any malpractice on the part of their colleagues. Ultimately, the organisation will benefit from the whistle-blowing as a lot of money would be saved. At the moment, whistle-blowing seems to be discouraged as those who have done it generally end up badly. For example, on 8 June 1994, it was reported in The Times that a British banker, Alan Crabtree, was left destitute after blowing the whistle on a £66 mil. fraud by colleagues at the Trust Bank of Africa in South Africa. A series of death threats forced him and his family to abandon their home and savings. They had to leave South Africa within a week. His attempts to get a job in the financial

world in London were largely fruitless. One of the reasons was that employers were nervous about his whistle-blowing. Why should they feel nervous when the potential employee had helped save his previous company from losing more money? They should be grateful to have such a loyal employee in their company although it is often the case that people do find it difficult to work with the conspicuous virtuous. At the moment, it seems that it does not pay to whistle-blow. Decent and honest organisations which really want to prevent fraud must give their employees more incentive to whistle-blow on any malpractice by their colleagues.

The social and cultural environment within which an organisation operates is also very important. There should be a fixed and clear personnel policy covering the selection, training, promotion and remuneration of officers and employees. Tadin, the Auditor-General of Malaysia, said that a competent group of employees was also the product of proper effective training, sensible evaluation and promotion practices and a work environment which provided reasonable incentive for good performance (Tadin, 1990; 6). This is to prevent favouritism, nepotism and ill-feelings among the employees. Lee also suggested that key or sensitive positions should be filled by personnel on a rotational basis (Lee, 1992; 41). This is to prevent one person from getting too familiar with that particular position, especially if it is a high ranking one which is exposed to opportunities for fraud.

Lastly, the key to healthy financial institutions depends fundamentally on good quality management. Improved



internal controls and procedures, penalties against breaches of the law and code of ethics are insufficient to deter fraud and malpractice. Competent and trustworthy management members are the order of the day. Any management member who does not fit the bill has to be replaced as soon as possible. "When wrong doings are discovered, firm and positive actions should be taken to remedy the situation. Those responsible should be removed from positions of management and not be permitted to continue as in the case of BMF" (Committee of Enquiry, 1986; 942). Those in the management of BMF were not removed because top politicians were involved and no one from within the organisation dared to exercise effective control without consulting the Prime Minister. As the matter was left to the Prime Minister, he should have taken firm and positive actions to remedy the situation.

#### **1.5. Technological improvement and retraining of management members**

The control system of the organisation has to evolve with the times. As technology improves at the operational level to compete with other organisations, the control system, too, has to keep pace and be familiar with this improvement in order to reduce the opportunities for fraud. This means regular retraining of management members. Also, with the rapid advancement into international business dealings, there is a need to revise the internal control system to take into consideration overseas branches and subsidiaries.

### **1.6. Roles of professionals**

Leigh argued that the normal audit might not always pick up frauds and irregularities, especially if, as sometimes happened, directors were determined to conceal the truth (Leigh, 1986; 91). He also said that audit systems sometimes failed to perform satisfactorily for any of the following reasons: incompetence, failure to observe recognised accounting standards, fear of pressing clients too hard for explanation lest they lost clients and finally the client's needs having grown beyond the point where the auditors could do an adequate job for them (Leigh, 1986; 91). Auditors should be reminded that their responsibilities are not only to their clients who pay their fees, but also to everybody who relies on their reports, for example, creditors, shareholders, prospective investors, regulatory agencies of Governments and so on. As Nordin, the Chairman of the Malaysian Institute of Accountants pointed out, "In a real sense he has a moral duty to the public as a whole, which can be discharged only by the exercise of the most resolute independence" (Nordin, 1990; 3). They must not permit their responsibilities to their clients to override their obligations to the public as well as to maintain their independence, integrity and objectivity. They must exercise due care, diligence, fairness, honesty and independence during the course of an audit in accordance with approved auditing standards. If any proceeding for negligence in the conduct of an audit does arise, they are in a better position to defend themselves. If auditors failed to follow the proper procedures, strict actions should be taken

against them by the professional board.

The International Auditing Guideline 11 on Fraud and Error requires the auditor to plan his audit so that he has a reasonable expectation of detecting material misstatements in the financial information resulting from fraud or error (Nordin, 1990; 6). If an illegal act is discovered, the auditor should report the circumstances to the client's organisation at the relevant level of authority so that appropriate action can be taken by the client. In the 1986 amendments to the Companies Acts 1965 and the Banking and Financial Institutions Act 1989 in Malaysia, the auditors are required, in certain circumstances, to report the details of such incidents, when discovered, to the respective authorities other than the client's organisation (Nordin, 1990; 10). This action is needed, especially if the offence is committed by the management members or the Executive Board members themselves. Accountants are constantly facing difficult situations where their duties to their employers conflicts with their professional obligations.

In England and Wales, the Institute of Chartered Accountants operates the Industrial Members Advisory Committee On Ethics which provides counselling services by senior members to other members who are under personal pressure on matters which conflict with their ethical conscience.

Accountants should never point to the demands of the accountant-client relationship in order not to report a fraud case to the relevant authority. If they cover up the

fraud, they themselves are open to suspicion. If they are found to be holding back evidence, they themselves can be charged. They will also be subjected to disciplinary actions by their professional board. The professional board must constantly encourage accountants to inform whenever they come across malpractice.

Lastly, accountants must also be up to date with changes in the technological system, especially in information technology, so that they will be fully equipped to face the challenges arising from these changes. Likewise, the auditing techniques, too, must keep pace with these changes. If accountants and their accounting system are not aware of these changes, they will be ill equipped to detect any fraud or malpractice. The Chairman of the Malaysian Institute of Accountants suggested the system of compulsory continuous professional education for all accountants so that they would be constantly kept up to date with the developments in their profession (Nordin, 1990; 8).

The above statements are also applicable to the lawyers.

#### **1.7. Auditing of public enterprises and the role of the Auditor-General**

Where the auditing of public enterprises was concerned, Ahmad Noordin, the leader of the Committee of Enquiry for the BMF case, said that there was provision for the Government to ask the Auditor-General to undertake the audit (Star, 18/1/1985). The role of the Auditor-General and his department is to ensure that proper accounts are kept by the

Ministries, Government departments, statutory boards and all public enterprises. This means that the accounts of all Government departments and offices by right should be reported to and audited by him. This procedure should be safeguarded. The company laws in India actually provide that all companies owned by the Government should have their accounts audited by the Auditor-General. The Auditor-General should be given the role of financial watchdog for the Government.

In Malaysia, the Auditor-General is supposed to report to the Public Accounts Committee of Parliament any malpractice as well as any weakness in the existing accounting procedures and the relevant measures that should be taken. The Public Accounts Committee would then call up all erring department heads to explain any discrepancy. The Chief Secretary to the Government usually has to put things right by issuing circulars to tighten existing procedures. If any case needs to be investigated, the Cabinet Committee on malpractice would refer them to the Anti-corruption Agency (Kesavan, 1991; 163). This procedure is too lengthy and time consuming. Perhaps the Auditor-General should be given the power to call up all erring department heads as well as to initiate investigations together with the Anti-corruption Agency or the Police if there is a need to do so. The Auditor-General should then report his or her actions to the Public Accounts Committee at the Parliamentary level. The Public Accounts Committee should act as advisor to the Auditor-General.

Ahmad Noordin suggested that the Government could also

establish a commission or a board of audit for auditing public enterprises. This commission would consist of members drawn from partners of accounting firms. The commission, headed by the Auditor-General, would review the audits of the accounts of the public enterprises and report to the Parliament. This was supposed to be a sort of review body, whereas the actual auditing should be done by accounting firms appointed by the commission. The audit office and the firms of accountants could work together to ensure that the standard of audit was complied with (Star, 18/1/1985) .

The Auditor-General of Malaysia, Ishak Tadin, said that the audited statement of accounts and the related Auditor-General's report on the Government statutory bodies were required, under statute, to be tabled in Parliament (Tadin, 1990; 3). However, he also revealed that in Malaysia, a number of State and Federal Statutory Bodies did not disclose in full their audit report. They printed only the certificate which expressed the opinion on the audit, but not the auditor's observations and comments. This practice was said to be inconsistent with the professional ethics of responsibility to clients (Tadin, 1990; 3). The accounts of all public enterprises should be required to comply with the law. Published details of their accounts will also force these public enterprises to be more accountable.

Government agencies in control of national resources should also be made accountable to Parliament. For example, Petronas, the Malaysian oil company which had been used to bail out ailing public enterprises, should reveal its accounts. There should also be greater disclosure on the

part of public companies about their share-holdings and major deals that they have undertaken. Publications of these will ensure accountability and control on public enterprises.

#### **1.8. Secrecy in banking and other Government departments and agencies**

There must be secrecy in banking in order to earn the trust of customers, but if there is a criminal investigation, then banks, especially the central bank, should cooperate with the relevant authorities in supplying information and relevant documents. In my interviews with the two members of the Committee of Enquiry in the BMF case, they commented that the Board of BMF and the management of the parent bank, BBMB, had not cooperated during their investigation. A few members of staff gave limited cooperation because they needed clearance from the top management before replying or providing information or documents requested by the Committee. This had hampered and delayed the work of the Committee. Banking secrecy should not stand in the way of criminal investigations undertaken to expose and punish criminals as in the BMF scandal. If fraudsters or criminals know that they will be protected by banking or information secrecy, it will encourage instead of discourage malpractice. Moreover, tax payers have every right to know what has happened to their money.

Likewise, Government departments and agencies, too, should cooperate with the investigators of any criminal investigation by supplying the relevant information and

documents of the criminals and their activities, for example, the department of inland revenue, etc..

Financial institutions, the central bank and Government agencies should also be helpful to researchers undertaking researches into the control and prevention of fraud and malpractice. These researches will ultimately be beneficial to them.

#### **1.9. Bank Negara, the central bank**

After the occurrence of a few major financial scandals in Malaysia, Bank Negara issued a formal Code of Ethics in October 1988 in consultation with the financial institutions themselves to combat fraud and other malpractice. The Code covers six core principles pertaining to desirable practices i.e.:

1. To avoid conflict of interest which relates to the outside commercial interests of employees, the appointments of staffs to management board outside the firm and the acceptance of 'gifts';
2. To avoid misuse of position in relation to borrowing of funds from customers or give preferential treatment by customers in their business;
3. To prevent misuse of information gained through the financial institution's operations, either for personal gain or for any purpose other than that intended by the financial institution;
4. To ensure completeness and accuracy of relevant records;
5. To ensure confidentiality of communication and



transactions between the financial institution and its customers and;

6. To ensure fair and equitable treatment of all customers and others who rely on or who are associated with the financial institution.

(Ahmad, 1990; 5-8)

In June 1989, a new Banking and Financial Institutions Bill was also tabled before Parliament. One of the issues raised was giving the central bank the power to act quickly in future instances of financial distress in all sectors of the financial system. The central bank officers may now be appointed as investigators or prosecutors to deal with the various offences under the Act. The enhanced powers given to the central bank's investigative officers are akin to police powers, which include powers of entry, search (including search of persons), seizure, detention and examination of suspects. These powers complement their powers to prosecute by allowing them to gather the necessary evidence. The police may request or the central bank may hand over the evidence to the police for them to make use of in their prosecution. The penalties under the Act have also been enhanced so that they are commensurate with the severity of the offences and abuses of powers (Lee, 1992; 46).

Bank Negara is making an effort to try to prevent another major scandal from taking place. However, even with these new regulations being introduced, Bank Negara will still fail to prevent malpractice if its members do not carry out their duties efficiently. The BMF scandal was

partly due to the failure of Bank Negara to discharge its role effectively, i.e. to supervise, check and monitor the activities of the bank. Bank Negara is also expected to show a good example to the other financial and banking institutions. If Bank Negara cannot give a good example, then it cannot lead the other banking and financial institutions. For example, in April 1994, Bank Negara had lost M\$5.7 bil. (£1.43 bil.) on betting in world currency markets (The Independent, 1/4/1994). The bank had also lost M\$9.3 bil. in 1992 from currency operations. The bank has built a formidable reputation as an aggressive speculator in international currency markets. This is not the reputation a central bank should adopt. Bank Negara should stick to its role of regulating monetary policy and managing the economy instead of betting ferociously in the international currency markets.

Laws and regulations of banking and financial institutions must also be reviewed and changed with the times. Moreover, with greater internationalization in the financial industries, regulatory supervision has to be coordinated within the economy as well as internationally.

#### **1.10. Anti-corruption Agency and the police**

In the BMF case, the Anti-corruption Agency and the police did not carry out their duties in investigating and bringing the culprits to book. This is a sign of the custodian of the law not being accountable to the public. The problem is that in Malaysia, the Anti-corruption Agency is under the Prime Minister's office or under the Home

Affairs Ministry. It can be dictated to by the Prime Minister as well as the Home Affairs Minister (in Malaysia, the Prime Minister is also the Home Affairs Minister). As long as the Anti-corruption Agency is not a fully and truly independent investigative and prosecuting body, it will remain ineffective because it could be misused and misdirected to cover up the misdeeds of corrupt politicians, bureaucrats and the elite members. The Anti-corruption Agency should be accountable only to the Parliament so that it could carry out its duties without fear or favour.

Likewise, the police and other law enforcement agencies, too, should be independent and accountable only to Parliament so that they could bring corrupt politicians, elite members or bureaucrats to book.

Another problem with the Anti-corruption Agency and the police is the shortage of trained staff members to investigate fraud and corruption because scandals like the BMF case are highly technical. Suggestions have been put forward to recruit professionals. However, it has not been easy trying to recruit professionals into the Anti-corruption Agency or police because of better earning prospects in the private sector. Perhaps it is more realistic to get these professionals to be involved in the investigations or as advisors as part of national service to the country whenever the need arises. Thus every professional will be called for duty whenever necessary. Their employers will have to release their staff members with full pay. If the investigation takes a longer time, perhaps the professionals or their employers could be

compensated with a nominal amount of money.

#### **1.11. Investigative committees appointed by the authority**

The findings of any legitimate investigative committee appointed by the Government should be allowed to be used as evidence in court. This point is made with reference to the investigation findings of the members of the Committee of Enquiry of the BMF case which the then Attorney-General refused to accept as legitimate facts for the prosecution of the culprits. The findings were gathered through laborious hard work involving a lot of the tax-payers' money and yet, they were dismissed by the police authority. If the police authority felt that the findings might not be concrete, they should have double-checked for their own purpose. This would save them the time and cost to start from afresh.

#### **1.12. Declaration of businesses and assets**

Heads and management members of law enforcement agencies like the Attorney-General, the Director of the Anti-corruption Agency and the Chief Inspector of Police should not be involved in any business venture as this is in conflict with their duties. If other employees in these establishments intend to be involved in businesses, they should notify their department heads and obtain the necessary permission to do so. Their business ventures should then be recorded.

Ideally, politicians should not be involved in any business venture. However, the practice in Malaysia is such that politicians can also be businessmen. In such

circumstances, politicians must declare their business ventures, share-holdings and any other commercial interest.

Likewise, business activities of Directors and management members, especially those in the public enterprises and financial institutions must be declared.

In addition to business ventures, the following assets should also be declared:

1. Shares owned by employees and Directors or heads, especially in the financial institutions and public enterprises;
2. Assets like properties owned by them both locally and abroad.

#### **1.13. Other points of law**

Sanctions imposed on offenders may entail criminal, civil or administrative penalties whether singly or in combination. Grabosky said sanctions served four goals. The first of these was deterrence. Perpetrators of fraud should be discouraged from reoffending and others should be deterred from following in their footsteps. The second was restitution. The third was rehabilitation to prevent recidivism. The fourth was denunciation. The act or acts of fraud were subjected to formal condemnation which had as its goal education as well as denunciation (Grabosky, 1991; 10).

The penalties meted out to white collar offenders so far have included longer terms of imprisonment and heavy fines which have already been implemented in a few countries. These measures are not enough to deter further offending as they or their families can still enjoy the

fruits of the offences. Assets accumulated by the offender through fraud should also be confiscated or frozen. Likewise, assets of offenders abroad should also be frozen with the help of overseas authorities. Moreover, properties or resources in the possession of relatives, friends, trustees and any other person, who are keeping them on the criminal's behalf or as gifts bought with the ill-gotten gains must be confiscated. If the offender claims that they are not acquired with the ill-gotten gains, then the onus is on them to prove otherwise. Persons found guilty of fraud should also be barred from holding any public office. According to Levi, in England, "In addition to the traditional ban on bankrupts engaging in trade, under the Company Directors Disqualification Act 1986, the court may forbid a person from acting as a Director on conviction for an indictable offence 'in connection with the promotion, formation, management or liquidation of a company'" (Levi, 1988; 12).

Passports of offenders should be impounded as soon as they are caught not only to prevent them from absconding to another country, but also to prevent them from divesting their assets to another country.

Present investigations of fraud offences are time consuming and costly. This is due to the difficulties in getting the facts of the case. These difficulties involved may actually encourage fraud. The potential offender may think that he can get away with it. The time wasted between the initial charge and the final inquiry which may be years may be used by the offender to destroy all evidences.

Moreover, witnesses may also not be able to recollect the case during the trial after such a long time. The investigative methods into fraud cases should be revised and improved so that the length of time taken for each investigation will be drastically shortened.

The cost of the Carrian trial on fraud against its shareholders came to roughly HK\$100 mil. (US\$12.8 mil.) in legal fees and costs, a committal hearing and a trial lasting 281 days (FEER, 1/10/1987). The Carrian trial had been costly to the taxpayers and 281 days was a lengthy period. Perhaps the facts established in the Carrian trial and also Hashim's trial which were relevant to try Lorrain Osman could be used to save time and cost. The Criminal Investigation Director in Malaysia, Zaman Khan, said the police had proposed to the Home and Law Minister that white-collar criminals should be made to pay the costs of court action and compensation to the victims (NST, 26/5/1993). He also spoke of the need for deterrent sentences and laws to seize the properties of a criminal to pay compensation to his victims. This was in view of the fact that, "many bankrupts (offenders) are still going around in expensive Mercedes Benz cars. People will only realise crime does not pay if the sentences are adequate and not just a day's jail sentence" (NST, 26/5/1993).

In Malaysia, the administration of the courts is being severely strained, especially in the capital where it is nearing the breaking point. Some of the reasons are:

1. Shortage of Judges and magistrates;
2. Shortage of court buildings;

3. The support staff, both administrative and clerical, are inadequate in numbers and in some cases, in calibre.

(Chooi, 1987; 23)

With the shortage of judges and magistrates, there is further reason to shorten the trials of white collar crimes. Trials are usually conducted before a jury who will be subjected to both oral and documentary evidence. The problem here is whether the jury can comprehend fully the complexity of the case. This problem also applies to trial judges who are not well versed in the complexity of commercial enterprises. Under such circumstances, how could the jury or the judge be able to assess, for example, whether the directors were dishonest or trying their best to save their ailing companies? As Leigh rightly put it, "there will remain questions concerning how effectively a conventional jury, chosen at random, will be able to master bulky and technical cases" (Leigh, 1986; 98). Perhaps, special judges with business educational background should be chosen to preside in such cases. Juries, too, should be picked only from the law, accounting and other relevant professions.

Finally, there should be cooperation between different countries, especially where extradition of offenders is concerned. At the moment, some countries have no extradition facility and they become a safe haven for offenders. For example, Rais Saniman, one of the offenders in the BMF case, is a free man in France because the French authorities refuse to extradite him to Hong Kong or Malaysia to stand



trial. Thus, any offender will try to escape to another country where there is no extradition law to escape prosecution and at the same time enjoy the fruits of their corrupt act. This is an encouragement to potential offenders.

There are also problems of getting witnesses to testify if the offence took place in another country. Witnesses will be reluctant to fly to another country to give their evidences. Perhaps written evidences from these witnesses, telephone conferences, videotapes or even satellite pictures of the witnesses abroad should be allowed in courts. In England, the Criminal Justice Act 1988 made provisions for the admittance of evidence obtained on letters rogatory. The Act also provides for giving evidences through a live television link. These methods should be adopted by the criminal justice system of all countries, including Malaysia. These methods will definitely save time and cost. In this aspect, the cooperation of the law enforcement agencies of other countries is needed, for example, to get the testimony of these witnesses in their country.

In the next section, I will discuss the prevention of fraud at the macro-level.

## **2. Macro-level of prevention**

The introduction of the New Economic Policy (as explained in chapter 1 and 4) had led to the creation of many Government agencies and enterprises to help the Malays to achieve a better position in the local economy compared to the other races. By 1990, the Government had equity

interests of between 10% to 100% in about 1,000 Government companies and agencies. Out of the total paid up capital of M\$18.6 bil., M\$14 bil. represented Federal Government's share (Tadin, 1990; 2). The aim of the New Economic Policy was laudable i.e. eradication of poverty regardless of race. However, in practice, it has also created many opportunities for fraud, corruption and other malpractice. As long as the opportunities are there, there will never be a shortage of offenders. Scandals like the BMF, Bank Rakyat and Deposit-taking Co-operatives took place partly because of the greed of certain corrupt elites and politicians who accumulated their ill-gotten wealth directly or indirectly under the guise of the New Economic Policy and also because the national leaders had failed to act against these criminals. As Muzaffar, the leader of Aliran, an informal movement for freedom, justice and solidarity in Malaysia, pointed out, "To expose their misdemeanours would be to expose the New Economic Policy's not so subtly concealed agenda of creating Malay capitalists, whatever the costs and the consequences. Ethics have to be set aside for the time being - so it has been argued in certain official circles - to facilitate the rapid growth of a Malay capitalist class. If there is one thing that must be emphasised in Malaysia's economic policy in the nineties and beyond, it is ethics. Only if the ethical foundation of society is firmly established, would it be possible to combat corruption and curb abuse of power" (Muzaffar, 1989; 99).

The following sections of this chapter will look at the weaknesses and possible preventive measures in the

political, social and cultural systems of Malaysia which are conducive to fraud.

## 2.1. The public

The Malaysian public generally avoid talking about fraud and corruption at the higher levels because:

- a. anybody doing so would be accused of being disloyal to the country because he or she is washing dirty linen in public. For example, when Malaysians wanted the BMF Committee of Enquiry report to be made public, the Prime Minister accused them of trying to topple the Malay leadership (see sec.1.2.8, chap.4);
- b. the existing draconian laws like the Official Secrets Act and the Internal Security Act described in chapter 4, muzzle the critics. As critics of the Government could be put behind bars at any time, Malaysians generally choose not to bring up the wrong doings of politicians or the elite members.

Some Malaysians have also become nervous about the possibility of the Government tapping their telephones or planting spies in society to clamp down on Government critics. Malaysians generally do not discuss politics on the telephone or in public areas. When a major scandal surfaces, the reactions of Malaysians could be said to be one of expectation and indifference. Sadly, the scandal will be generally forgotten as time goes by. The one scandal that

had the most attention was the BMF case. However, that case is now generally forgotten even though the trial is not over. The people who were held responsible are forgotten as Malaysians become preoccupied with other main and current issues. Malaysian society has become a passive one, highly tolerant of corruption and fraud. With the economic boom taking place at the moment in the country, it is not surprising that Malaysians in general are now more interested in making money than be concerned with the future of the political and social environment in the country. As one Malaysian put it, "We are not interested in politics when there is money to be made". Riches and materialism is the order of the day. The danger is that when wealth and riches made through unethical means are rewarded or recognised as deserving of titles awarded by the royal families, then the society will encourage even more unethical practices (Idid, 1990; 6).

As public opinion stigmatizes the offenders so lightly in Malaysia, it is not surprising they are not deterred from wrong-doing. As Douglas (1952) said, "The relationship between political leaders and people is a reciprocal one. The standard of the people influence those of the public officials and it is hard to develop honest official in a corrupt society. But, it is equally true that high standards on the part of the officials and public leaders raise the level of the whole community" (Monteiro, 1966; 66).

The control of corruption in any society will require ethical leaders as well as citizens who are alert, confident, politically aware and of high moral standards who

will "blow the whistle" and condemn malpractice. As Peter Drucker said, "Business ethics may be good politics or good electioneering. But, that is all. For ethics deals with the right action by individuals. And thus, it is society that must stress the ethics of prudence and self-development. It must expect its managers, executives and professionals to demand of themselves that they shun behaviour they would not respect in others and act instead in ways appropriate to the sort of person they would want to see in the mirror in the morning" (Idid, 1990; 6).

The public should be encouraged to condemn fraud and corruption openly and to report to the relevant authorities if they suspect any illegal activity going on, especially involving the leaders of the country. They should also be given the assurance that their reports are strictly confidential so that they will have the confidence to come forward. Likewise, the state must be sufficiently open to allow such protest.

In order to encourage the public to "whistle-blow" or condemn any fraudulent or corrupt act, they have to be made constantly aware by politicians, the media, etc. of the ill effects of fraud and corruption and also the erosion of society's moral base, especially one which is materialistic. Politicians, too, should ensure the public that they will not be persecuted if they voice their opinions on fraud and corruption. As the Indian social reformer, Jayaprakash Narayan stressed in the context of his own country, "the public must realize that without moral fibre a nation cannot survive. Having realised that, they must be prepared to

act...Of course, those of us who hope to develop this moral consciousness among the public must make sure that what we preach is also what we practice" (Muzaffar, 1989; 160). Moreover, the public must be taught that loyalty to principles is far more important than loyalty to the Government.

## **2.2. Leaders of the society**

"Corruption in another sense is political: its success, even locally, is a manifestation of power. This power is manifested negatively...Corruption involves the diversion of public funds into private hands, and inefficiency in the use of manpower and resources. Not only does it lead to the enrichment, often to grotesque levels, of those who find or get themselves into positions where they can exercise corrupt influence, but it involves the exclusion of those unable to participate in paying for corruptly given favours. Its essential objective is to eliminate competition, to create a charmed circle, an inside track" (Clarke, 1983; xv-xvi). This is what is generally happening in Malaysia at the moment. Top posts in the public sector are usually connected to or under the patronage of politicians. In order to get these posts, the applicant must be connected to some officials. Also, in order to get certain things done, you must know somebody at the top. Likewise, to get out of an 'uncomfortable' position, one must again know some high ranking officials. The trend has become somewhat institutionalised. As Ward said, "Although there is some evidence within city power and servicing agencies to suggest

that Weberian-type rationale play an increasingly important role in the allocation of urban resources to the poor, it is also the case that most cities have agencies whose covert rationale has little to do with helping and more to do with controlling. In such cases the art, perhaps, is to differentiate between the two types of bureaucracy" (Ward, 1989; 4).

In Malaysia, there are three 'covert' ways of allocating resources, i.e. through corruption, nepotism and patron-clientelism. In the case of corruption, it is open to anyone who can afford to bribe the corrupt politicians. Nepotism and patron-clientelism are for more exclusive groups. Nepotism depends on the blood tie between the corrupt politician and the person seeking his or her favour. Patron-clientelism involves, "a voluntary reciprocal relationship between social unequals in which loyalty is traded by the weaker in exchange for resources from the stronger. Patrons disburse resources on a selective basis; the beneficiaries may be kin, but usually the networks link individuals of different social standing who are not related" (Lowder, 1989; 126). All three ways are used rampantly by corrupt politicians in Malaysia. This trend has prevented the maximum utilisation of human resources as better qualified people are not given the chance to make use of their talents. This has created a lot of 'wastage' in the society. As a result, the growth and development of the country are slowed down. The misery of the poor and the poverty-stricken in the country will also be prolonged. This is a very unhealthy trend.

Leaders of any institution or society must carry out the vows they made when they took office to be competent, qualified, honest, ethical and fair in their judgement. The downfall of some Asian countries is mainly due to unethical, corrupted and inefficient leaders and administrators. For example, in China, one of the major causes of the downfall of the emperors in its history was a lack of capable, efficient and honest officials in their administrations. "If the leaders are corrupted, the other officials cannot be subjected to strict control. Corruption will spread from top to the bottom. It started with them, then spread to their officials" (Alatas, 1990; 102). Even if the leader himself is not corrupted, corrupt officials in his administration will still bring about his downfall.

As Lord Shang (d. 338 B.C.), a strong exponent of legalism and severe punishment of the Chin period in China said, rulers and ministers who indulged in their selfish desires were like woodworm that made the wood snap and eventually caused the wall to collapse (Alatas, 1990; 50).

In the Western societies, the emphasis is on the rule of law to overcome fraud and corruption. But, for it to work, there must be sufficient good and honest leaders and administrators to implement and support them whole-heartedly and honestly. The leaders must be able to exhibit good examples for their people to follow. They should uphold the laws and refrain from committing the offences themselves. In other words, a high standard of morality should be maintained to get rid of the common complaint that the men at the top are corrupted. This high standard of morality



should be laid down clearly in the form of codes of ethics and procedures. Ultimately, the society as a whole will come to accept this high standard of morality.

In 1978, Quah mentioned that Singapore is known to have the cleanest Government in the world (Quah, 1978; 20). The success of controlling the problem of corruption in Singapore was attributed to the high morality of the Government and its efficiency and dedication to eliminate the problem.

It must be stressed that corruption among minor officials cannot be combated if it is not stamped out at the higher level first. Thus, values and attitudes, especially within the leadership stratum of society, will have to change. Leaders must develop a detached attitude towards both power and self-interest. As Quah said,

"The fact that corruption is incidental and not institutionalised in Singapore is not an accident, but the result of the determination of the PAP (People's Action Party) Government in general and Prime Minister Lee Kuan Yew in particular to eliminate the 'disease' of corruption in the country. In other words, the major reason for Singapore's success in controlling the problem of corruption is the quality of her political leaders and their commitments towards the elimination of corruption both within and outside the public bureaucracy. In order to eradicate the problem of bureaucratic corruption in any country, comprehensive administrative reforms are needed. And such reforms can only succeed if the political leaders concerned lend their support and sponsorship. In other words, they must set an example by refraining from corrupt behaviour themselves" (Quah, 1978; 20).

The political leaders must also be clear-cut and forthright in their decisions and actions to deal with political, bureaucratic and private sector fraud and corruption in the country. Culprits must be made accountable

for their actions. It is precisely the failure of the political leaders to take firm action that allowed the BMF trials to drag on for years. The cover-up by the Government and the delay and excuses given for the investigation and publication of the BMF case had allowed some politicians and culprits like Rais Saniman (who had absconded to France) to evade punishment. With such examples given by the Government, it is not surprising that other fraud cases in the public sector will follow. If the Government cannot uphold the law of the country, then it cannot expect the people to do so.

### **2.3. Leaders and business**

In Malaysia, as has been explained in chapter 4 as well as in section 1.12 of this chapter, politics do mix with business. Political parties as well as individual politicians are allowed to own businesses. This close relationship may generate fraud and corruption.

Firstly, rich businessmen are able to contribute to the coffers of the political party, especially for campaigns during an election. The large amount of money contributed is irresistible to politicians who love power and who will do anything to retain it. Acceptance of these large sums of money comes with obligations. Big businessmen do not donate large sums of money for free. Politicians are expected to do favours for them, sometimes leading to fraud and other malpractice, whenever they are needed. In this case, the rich will get richer. As Monteiro pointed out, "It is for the political leaders and administrators wielding power

today to realise that unless they can successfully rise above their obligations to big business and dedicate themselves to the service of the common men with the same spirit of ardour with which they once led the battle for freedom, they will not only damage the very fruits of freedom, but will have to go down in history with the curse of the very people who enthroned them in the leadership" (Monteiro, 1966; 104). Business activities by political parties should be prohibited by law to prevent conflict of interest and money politics. The law should require all political parties to declare publicly the donations and contributions they received. This is the best safeguard against corruption by political parties as well as by business people who are tempted to use their wealth to influence Government decisions. This is also one way of making political parties accountable for their future actions, especially in their dealings with their donors. Expensive campaigns should also be discouraged as it invites business people, with their large donations, who hope that their requests would be met if the party wins the election. Eventually, "money politics" will become the order of the day. Muzaffar suggested that a Election Commission, which is constitutionally an independent body, should take over the basic financing of elections (Muzaffar, 1989; 52). The Commission will allocate a certain sum of money to each candidate to finance his or her election. Rules will be set out on how the money should be used and each candidate will be required to submit detailed accounts of his or her electoral expenditure. Such a system will prevent the growth

of money politics and ensures that no candidate would be able to outdo its opponents by having lavish campaigns.

Secondly, political parties and politicians who have their own business ventures will definitely have the advantage over other businessmen as shown in chapter 4. This is an unfair advantage as they will have much better chances than other people to make money, especially where Government contracts involving large sums of money are concerned. Once they get the contract, the opportunity to bring the cost of the project to a phenomenal level is there. Political parties and politicians should be prohibited from getting involved in business, especially in developing countries like Malaysia. It is unethical for any politician to abuse his or her powers to make money at the expense of state enterprises, especially when they are set up to help the Bumiputras. If politicians are allowed to carry out businesses of their own or to have investments, they should do so in their personal capacity and not mix them with their official roles. Their businesses should be treated on equal terms with other businesses. If they are vying for public contracts, an independent group of people should be on the board for allocating these contracts in a fair manner. Business and politics should never mix. Unfortunately, they always do.

#### **2.4. Media**

Jeremy Bentham once declared, "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity" (Monteiro, 1966;

106). The role of the mass media, especially the press, is crucial here. Freedom of press and expression is the basis of a democratic society. It is only with this freedom that political fraud and corruption can be exposed. The majority of political malpractice so far has been uncovered through investigative journalism. Moreover, the media can also educate the masses about the evil of fraud and corruption and at the same time encourages them to take actions against these problems. The press will also become the medium of complaint as well as watchdog to any political malpractice. Without this crucial role, democracy cannot be fulfilled.

If the press makes a wrong accusation against the Government or any politician, legal actions, for example defamation, could be taken against that particular press. An upright Government or a politician should have no fear of any action taken. Moreover, if the Government or politician is right, the public themselves will condemn the newspaper. The newspaper should not be banned because it should be given the freedom to report. The legal actions taken against it will make it be more responsible in its future reporting. In this aspect, the British Government gives a good example. When the Pergau Dam affair surfaced in 1994 involving giving monetary aids to Malaysia by Britain in return for arms deals, the British press, especially The Times and Sunday Times, accused some Malaysian politicians including the Prime Minister of accepting bribes from British firms. The Malaysian Government strongly denied the allegation. There was a lot of tension between the British press and the Malaysian Government which led to a total ban on Malaysian

Government purchases from Britain. The implication was that the British Government should take some actions against its press. However, the British Government did not do anything because it believed that freedom of the press must be upheld in a democratic society. It is willing to uphold such freedom in spite of the ban on British goods and services imposed on it by the Malaysian Government. The Malaysian Government should not have gone to such lengths. If it was not happy with the allegations of the British press, it should have taken action (for example defamation) against it. If the British press was wrong, the truth would exonerate the Malaysian Government. However, the Malaysian Government took no action against the British press. By not doing so, it only confirms the allegation. The example of the British Government in upholding the freedom of press should be followed.

In Malaysia, so far, powerful laws like the Printing Press Act, the Official Secrets Act and the Internal Security Act have prevented the freedom of press and expression. For example, in the mid 1980s, the Minister of Home Affairs suspended three local newspapers (see chapter 4) because they were said to be playing up racial issues. In actual fact, they were only reporting racial issues played up by unscrupulous politicians who were trying to cover up fraudulent offences committed by themselves or their colleagues. As Glickman observed correctly, "Indeed, of all the rationales for censorship advanced by governments around the world...national security, protection of public morals, curbing racial and ethnic hatred, etc...assuring self-

protection by preventing exposure of corruption is perhaps the predominant real reason" (Glickman, 1991; 1). "There is a tendency in some parts of the world to pay lip service to freedom of expression, suggesting that it is an esoteric or abstract concept which must take a back seat to economic development. The fallacy of this view is underscored by the experience of the countries...where top officials plunder the public treasury because the press is not free to bring the story to public light" (Glickman, 1991; 6). There should not be any law that will take away the freedom of the press. Of course, as I mentioned earlier on, the press should be responsible in their reporting. Responsible reporting in Malaysia means that the media must not be used by unscrupulous politicians in an irresponsible way to promote their own self interest. This is very important in Malaysia, a multicultural society, where sensitive racial issues could destabilise the country when the sentiment of the public is aroused. The press should be responsible enough where reporting sensitive issues is concerned so as not to create any tension among the different races. In fact, they should allay the fear and sentiment of the public rather than doing exactly what the unscrupulous politicians want them to do i.e. to create racial tension to cover up their corrupt acts.

## **2.5. Racial excuses**

A paper titled "Corruption and the Malaysian situation" presented at the Aliran seminar in Kuala Lumpur on 2 November 1980 by Azmi Khalid and Harun Halim Rasip had made

the following observation, "Ethnic relationships in our ethnic-conscious society have only served to exacerbate and complicate the problem of corruption, especially when emotive appeals help to justify acts of corruption in racial terms. The inter-ethnic competition for power and influence has seen to it that even religious values can be clouded by racial prejudices. It has been said that it is alright to indulge in corruption for the benefit of one's own community". This observation gives support to the fact that some politicians in Malaysia would use racial sentiments for their own ends. This includes creating racial issues to deflect attention away from their own or their colleagues corrupt offences as explained in chapter 4 or to get more votes from their community. Malaysians should now be more critical of racial issues created by unscrupulous politicians rather than just accepting them with blinded emotions. All races in Malaysia generally get along well with each other. Malaysians do not need such politicians to stir up trouble from time to time and create uneasiness in the society. Any racial issue should be discussed in a rational rather than emotional way. They should question whether these issues are justified and what are the intentions of these politicians in raising them. They should also realise that if they are not affected by these racial issues, the politicians would not be able to use this ticket in their campaigns to gain votes. Politicians would then be judged on their merits and capabilities. At the moment, voting in Malaysia is very much based on which politicians can defend their own communities' rights rather than which



politicians are capable of running the country. With such racial sentiments around, it is not surprising that some shrewd and cunning politicians will make full use of this fact for their own ends. This is where the role of a responsible press is important. The press could influence the public by questioning and analysing the motives of the politicians who raised certain racial issues. In this way, the press could also help build a harmonious environment among the different races in Malaysia.

## **2.6. Official Secrets Act and the Internal Security Act**

The Official Secrets Act has limited access to many public documents. Thus, many public businesses are conducted in secrecy. The public has been constantly kept in ignorance of things they ought to know about, especially when they involved tax payers' money. This is not a healthy practice because it creates opportunities for fraud and malpractice. The likelihood that a fraud will be detected is reduced if the flow of information in the public enterprises is restricted to only a small number of individuals. The Government should be more open and accountable to the public. Confidential matters should be limited. Moreover, because of the unclear definition of what is considered official secrets and the draconian way in which it is implemented, many Government officials choose to be silent when the public ask them for information or else they will pass the enquirers from one department to another.

The Internal Security Act (ISA) is an even more draconian law because people can be jailed by the Minister

of Home Affairs under the ISA at any time without being given a valid reason or trial. This Act was originally used to curb communist activities during the colonial period. But, Malaysia had already been declared a "white area", i.e. free of communist activities, in the mid 1980s. The Act has not been amended and could be used to curb dissident views by the Government as explained in chapter 4. This Act has made the public afraid to voice their dissatisfaction against the Government or even to express truths like some politicians are corrupted. I do not have any evidence, but I do believe Malaysians generally tend to avoid controversial issues because of this Act and they have become a very passive society. This gives the Government even more power to do what they want. Dishonest politicians will use this powerful tool for their own ends.

The ISA has not only been used to clamp down on the critics of the Government, it has also been used to take away the freedom of the press as explained in chapter 4. Without freedom of press, what is left of democracy? The freedom of press and expression, as I have mentioned earlier in this chapter, is the basis of democracy. If the Government or any politician is not happy with something that is said about them, there is the legal option that could be taken against the newspaper or the person who made that comment. Accountability in statements made is then ensured both ways.

For the Malaysian case, the ISA is the most powerful weapon to prevent the control of fraud and corruption among political leaders and the elite members. With the presence

of such Act, the public is deterred from questioning the Government. This draconian Act should be abolished.

## **2.7. Accountability**

The Official Secrets Act, as discussed above, has also lessened the accountability of members of Government and public administrators over their actions. Since they cannot reveal all sorts of information to the public because of the unclear definition of what is an official secret, they can make use of this fact so that they do not have to be accountable to the public. If these people are not made accountable for their actions, culprits of fraud and corruption will be difficult to catch. Likewise, fraud and corruption will also be difficult to prevent.

The inaction and delay of the Government in dealing with fraud and corruption offences, especially in high places as in the BMF case, also points to a Government that is refusing to be accountable. We have the relevant laws, but the custodian of the laws refuses to uphold them. Is this a good and efficient Government?

## **2.8. International cooperation**

International cooperation has been mentioned in the micro section. However, it should be stressed again that there is a real need to maintain contact and cooperation among the law enforcement agencies of the different countries. The need is for combating the activities of international fraudsters and criminals and not to suppress evidences as in the case of BMF whereby 150 telexes sent

between the British, Hong Kong and Malaysian Government, which could throw light into the case, were not allowed to be produced in court (see sec.3, chap.4). This was because three British Ministers, i.e. Lord Caithness, Francis Maude and Douglas Hurd had signed the Public Interest Immunity order whereby these documents could not be circulated outside Parliament without breaching the immunity. International cooperation means helping another country to catch the culprits and not cover-up for them.

Lastly, the setting up of a universal data bank on all fraud and corruption cases could also help to furnish information for law enforcement agencies around the world as well as to facilitate researches on the nature, problems and prevention of fraud and corruption.

### **3. Conclusion**

In conclusion, there is a need to point out that this chapter looks at the problem of fraud in a sociological manner. The internal factor of human beings, i.e. the personality of the individual or personal reasons, has not been discussed. However, it is equally important if not more and should not be neglected. History has provided the fact that corruption was basically caused by dishonest individuals who gave in to temptations when provided with the opportunities to do so. There must be both the opportunities and the wish to commit the offence. There are people with opportunities opened to them, but who do not wish to commit the crime. As Alatas correctly pointed out;

"The relation between man and his social structure is similar to the relation between a dwelling and its

occupants. The structure of the dwelling conditions the life of the occupants, but the occupants can change the structure if they so wish. If the structure begins to leak and all the occupants resign themselves to it, blaming it on the structure, the structure will continue to leak. In this case, the explanation still lies with the occupants who do not wish to repair the structure. Something non-human cannot be held responsible for something human. The structuralist explanation of corruption shifts the locus of responsibility from the human actor to factors external to the actor. These external factors are significant in understanding the extent and manifestation of the phenomenon, but they are not the terminal point of explanation. They are the starting point. The terminal point is the nature of man" (Alatas, 1990; 122).

The best and most sophisticated strategy designed to combat fraud will only provide a short term structural change. In the long run, it will still be defeated by some fraudsters. In order for these sophisticated strategies to stand a better chance, it should be complemented with strategies that will produce changes in behaviour and internalized values. As McKinney concluded, "Effective accountability can best be achieved when it is a learned pattern, a response to habit. This becomes particularly important when it is realized that unethical behaviour, inefficiency and inadequate initiative cannot be controlled simply by rules or other external means" (McKinney, 1986; 6).

This point is also argued by Omar, the Chief Inspector of Police in Malaysia; "Therefore a reasonable presumption can be made that law and its enforcement alone are not a sufficient or complete answer to commercial crimes. Ethical values and virtues amongst persons in positions of trust in particular and amongst the populace in general must be nurtured and strengthened so that they become second nature

for people, especially Malaysians (13)...Behaving strictly within the confines of the law is merely being prudent and law-abiding, but not necessarily ethical. Law imposes demands from outside, while ethics should come from inside. Besides, if law constitutes the only behaviour limits, Government and law enforcement agencies would swell to overwhelming proportions" (Omar, 1990; 20). Ethics is an internalised value from within the individuals themselves to guard against succumbing to base behaviour and temptations. The laws of Malaysia have made provision for more severe punishments to be meted out for crimes such as fraud, criminal breach of trust, cheating and forgeries, yet these severe penalties and sanctions will not deter everyone from perpetrating such crimes. Ethics will strengthen and enhance the effectiveness of these structural changes. It is also fair to say that the teaching of ethics alone does not prevent some people from committing crimes. There should be both structural changes and behavioural changes in order to reduce fraud.

The Chief Inspector of Police in Malaysia believed that the inculcation of ethics must be rooted in the homes and throughout the learning process (Omar, 1990; 18). Outside of the home, the educational system can do its part by incorporating ethics into the system. Students from the primary level right up to the university and professional level should be inculcated with the appropriate universal ethical values and virtues like honesty, responsibility, accountability, kindness and justice. Ethical education should be planned and incorporated in the curriculum of

education. At the end of the day, a more balanced individual is produced for managing any organisation.

Universities in Malaysia are encouraged to incorporate ethics in their curriculum. Even though the university is only one institution among many that will affect students' behaviour and lives, direct intervention by the university in instilling the right values and attitude is vital. The years the students spend there represent an important stage in the development of most young people. It is there that students learn how to form critical ideas on moral and ethical dilemmas. It is also a stepping stone for their future career. "Universities should therefore be the first to reaffirm the importance of basic values, such as honesty, integrity, good conduct, self-discipline, social responsibility, fair-play and mutual respect. These are principles essential to civilised society and they are values on which learning and personal maturity ultimately depend" (Abdullah, 1990; 10-11).

Universiti Utara Malaysia has introduced a course on business ethics to its students. This course is compulsory for all students. It covers one full semester, combining general, philosophical and professional ethics. It should be stressed that for any ethical education to make an impact on the students, the behaviour of the lecturers is important. In fact, the whole system and administration of the university must reflect and demonstrate the teachings of ethics. This is being stressed by the second Vice-Chancellor of the university, Othman Yeop Abdullah. If not, "the formal course on ethics would be a futile exercise and may only

serve to produce cynics of ethics and morality" (Abdullah, 1990; 9).

As has been discussed in the micro section of this chapter, Bank Negara, the central bank of Malaysia, has also issued a Code of Ethics in October 1988 after the BMF case, setting out the minimum standard of conduct expected of Directors, officers and employees of financial institutions in Malaysia. These guidelines lend support to the Chief Executives of all financial institutions in their efforts to uphold proper standards and are not binding on any financial institution which has decided to formulate its own code.

It is an encouraging sign that some, if not many, of the public institutions in Malaysia are trying to help control fraud and corruption in the country. At least there is a ray of hope among a deep sea of problems to be cleared up.



## **Chapter 8**

### **Conclusion**

It has been a rather frustrating and difficult task trying to write about fraud at the higher levels in Malaysia; something which everybody know exists, but which is difficult to prove. It is even more frustrating when no one dares to talk about it. Some even ignore the topic completely because it may lead them into serious trouble with the higher authorities in Malaysia if they are not cautious. This is the main reason why studies of fraud and corruption at higher levels are rare. Another reason is the difficulty in getting data and information. Any literature dealing with this topic is usually on fraud and corruption among ordinary citizens. I believe these problems do not apply only to Malaysia, but also to many other countries, especially developing countries where the leaders are usually more totalitarian. Conferences and seminars held on fraud and other white collar crimes also centre on those committed by ordinary citizens. The papers are usually presented by politicians who are supposedly experts. However, no mention is made of fraud and corruption among the politicians themselves. This makes a mockery of their papers because the amount lost through fraud committed by their colleagues is much higher than ordinary fraud among ordinary citizens. For example, the loss through the BMF

scandal is much more than the loss incurred from other commercial crime in Malaysia per year (see chapter 6).

In late 1978, the Department of Justice in the United States estimated the dollar loss in defrauded public funds to be in the range of one to ten percent of all program expenditures. The General Accounting Office projected losses from known cases of fraud at between US\$150 mil. to US\$220 mil. and noted that the cost of undetected fraud was probably much higher (Beall, Bowers & Lange, 1986; 60).

Politically-sustained fraud seems to be a taboo subject everywhere. The attention concentrated on the crimes of ordinary citizens has led to the impression that the less well off are more prone to crime than the better off. As Box argued that publicity given daily to these crimes of the less well off by politicians, police, judges and journalists through the media of newspapers and television had sensitized the public to:

"muggers, football hooligans, street vandals, housebreakers, thieves, terrorists and scroungers. But, few are aware and sensitized to crimes committed by corporate top and middle management against stockbrokers, employees, consumers and the general public. Similarly, there is only a fog, when it comes to crimes committed by Governments, particularly when these victimize Third World countries or become genocidal, or by Governmental agencies such as the police when they assault or use deadly force unwarrantedly against the public or suspected persons or prison officers or special prison hospital staff when they brutalize and torture persons in their protective custody...Few people become aware of crimes of the powerful or how serious these are, because their attention is glued to the highly publicized social characteristics of the convicted and imprisoned population...Because of this, people make the attractive and easy deduction that those behind bars constitute our most serious criminals. As this captive audience is primarily young males amongst whom the unemployed and ethnic minorities are over-represented, it is believed that they, and those like them, constitute our 'public enemies'" (Box, 1983; 12-13).

There is no evidence that the rich are less corrupted than the less well off or the poor. In order to give a more balanced picture of the crime scenario, attention and research should be concentrated equally on the crimes of the well to do. "The evidence points in fact the other way, for the appetite grows by what it feeds on, and when one thinks of corruption in West Africa the mind does not naturally turn to the masses of poor people, whose resources are indeed so slender that there is little about which they could be corrupt, but to the glossy and well-fed" (Wraith & Simpkin, 1963; 43).

At the plenary meeting of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in 1985, it was suggested that improved standards of living, instead of reducing crimes, provided new opportunities for criminal activities. The economic criminal was said to be motivated by greed and would be spurred on with the realisation that there were generally lower risks of economic crimes being detected and prosecuted as opposed to the higher potential rewards they brought in (Hussin, 1986; 190).

From the case studies in Malaysia, it can be observed that fraud and corruption take place against a background of racial sentiments, the misuse of the New Economic Policy and the existing laws which help deter the public from questioning the actions of corrupt politicians. Gould and Mukendi, in their discussion of the African states, said,

"with the coming of political independence in the early 1960s, the state became the major engineer of social and economic changes and the focus of new aspirations and demands" (Gould & Mukendi. 1989; 436). This position is parallel to the case of Malaysia with the implementation of the New Economic Policy in the 1970s. There was a burgeoning of Government departments and agencies all set up to achieve the twin objectives of eradicating poverty and restructuring society. Thus, the expanding role of the state had been accompanied by an increase in institutions established, new rules and regulations made and a large amount of money expended, all of which contributed to the increase of opportunities for fraud. With the shortage of educated and well-trained staff, the boom in new institutions meant that there was a shortage of monitoring agencies that needed also to be set up. Ineffective financial and administrative controls thus encouraged fraud and corruption. Political mobilization and control exercised by the ruling elite led to the dominance of politics over bureaucratic values. Such a political environment provided fertile ground for nepotism, corruption and clientalism. Administrative structures were used essentially as institutions of patronage rather than as vehicles of social and economic development.

The Malaysian case is definitely not unique as discussed in chapter 5. The trend of fraud and corruption

among unscrupulous politicians is quite similar in the majority of developing countries. The general similarities are:

1. The building of a developed nation leads to rapid urbanization which introduces new values of materialism and status consciousness. These new values begin to replace rural values of simplicity and frugality in life;
2. The sudden increase of economic and development activities of the Government in trying to build a new country means the availability of numerous project deals from which huge profits could be made. Companies most favourable to the Government will usually get the projects. These companies are also the ones which would bring substantial monetary benefits to some politicians. Politicians, too, may capitalise on this by involving themselves in business;
3. In developing countries, a high percentage of citizens have little education. Due to this fact, they place trust in their Governments to run their countries without questioning their actions because they are seen to have the necessary skill and intelligence. Below is table 8.1 which compares illiteracy rate between underdeveloped or developing countries and developed countries.

Table 8.1

Illiteracy rate between underdeveloped or developing countries and developed countries in 1990

<u>Africa</u>	<u>%</u>	<u>Asia</u>	<u>%</u>	<u>Europe &amp; US</u>	<u>%</u>
Cameron	45.9	Bangladesh	64.7	France	*
Egypt	51.6	Cambodia	64.8	Germany	*
Gambia	72.8	China	22.2	Greece	6.8
Ghana	39.7	India	51.8	Italy	2.9
Kenya	31.0	Indonesia	18.4	Portugal	15.0
Morocco	50.5	Iran	46.0	Spain	4.6
Nigeria	49.3	Kuwait	27.0	Switzerland	*
Uganda	51.7	Malaysia <sup>1</sup>	21.6	US	*
Zaire	28.2	Pakistan	65.2		
		Philippines	10.3		
		Saudi Arabia	37.6		
		Sri Lanka	11.6		
		Thailand	7.0		
		Vietnam	12.4		

\* denotes zero or near zero

Source: World Education Report (UNESCO), 1993

The high percentage of illiteracy rates in underdeveloped or developing countries makes it easier for corrupt politicians to accumulate their wealth. This high rate of illiteracy is projected to stay for a considerable period of time by UNESCO as shown by tables 8.2 and 8.3;

4. If these politicians are being questioned about their actions, they can use their powers to invoke certain laws to keep their critics quiet. Corrupt politicians will try to take advantage of whatever policies or laws that exist in their countries for their own gains. With these laws and policies to protect them, they know they can get away with their corrupt acts. Thus, they will

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<sup>1</sup>Illiteracy rate in Malaysia in 1970 was: Peninsula Malaysia - 41.5%, Sabah - 55.7%, Sarawak - 65.1% (UNESCO Statistical Yearbook, 1980).

**Table 8.2**

**Projected adult literacy rates by sex,  
1990–2000 (percentages) \***

	1990			2000		
	Both sexes	Male	Female	Both sexes	Male	Female
<b>WORLD TOTAL</b>	73.5	80.6	66.4	78.2	84.6	71.8
Developing countries of which:	65.1	74.9	55.0	71.9	80.3	63.2
Sub-Saharan Africa	47.3	59.0	36.1	59.7	70.2	49.6
Arab States	51.3	64.3	38.0	62.0	73.1	50.6
Latin America/Caribbean	84.7	86.4	83.0	88.5	89.7	87.3
Eastern Asia	76.2	85.7	66.4	82.8	90.0	75.4
Southern Asia	46.1	59.1	32.2	54.1	66.2	41.2
Least developed countries	39.6	51.4	27.9	49.0	60.8	37.3
Developed countries	96.7	97.4	96.1	98.5	99.0	98.0
<b>BY CONTINENT</b>						
Africa	49.9	61.7	38.5	61.6	71.9	51.6
America	90.0	90.8	89.2	92.9	93.5	92.3
Asia	66.5	76.6	56.0	72.6	81.3	63.5
Europe/USSR	96.9	97.7	96.2	98.5	99.0	98.0
Oceania	92.5	93.9	91.1	94.5	96.0	93.0

\* Percentage of literate adults in the population aged 15 years and over.

Source: World Education Report 1991, UNESCO.

Table 8.3

Projected adult literacy rates in developing countries in the year 2000

Less than 50%	50 to 74%		75% or more		
Africa	Africa	America	Africa	America	Asia
Benin*	Angola	Guatemala	Algeria	Argentina	Bahrain
Burkina*	Burundi*	Haiti*	Botswana*	Bolivia	China
Chad*	Cameroon		Libyan Arab	Brazil	Indonesia
Gambia*	Central African	Asia	Jamahiriya	Chile	Jordan
Guinea*	Republic*		Madagascar	Colombia	Kuwait
Guinea-Bissau*	Congo	Bhutan*	Tunisia	Costa Rica	Malaysia
Mauritania*	Cote d'Ivoire	India	Zaire	Cuba	Myanmar*
Mozambique*	Egypt	Islamic Rep. of	Zambia	Dominican	Philippines
Niger*	Equatorial Guinea*	Iran	Zimbabwe	Republic	Sri Lanka
Sierra Leone*	Ghana			Ecuador	Syrian Arab Rep.
Somalia*	Liberia	Oceania	Europe	Guyana	Thailand
Sudan*	Mali*			Honduras	Turkey
	Morocco	Papua New Guinea	Yugoslavia	Jamaica	Vietnam
Asia	Nigeria			Mexico	
Afghanistan*	Rwanda*			Panama	
Bangladesh*	Senegal			Paraguay	
Cambodia	Togo*			Peru	
Nepal*	Uganda*			Suriname	
Pakistan				Uruguay	
				Venezuela	

\*Countries belonging to the group of least developed countries

Note: Only those developing countries for which projections are available are listed.

Source: UNESCO: World Education Report, 1991.



be bold and daring enough to carry out these corrupt acts.

Politicians in these developing countries are no different from those corrupt ones in Malaysia. In fact, the Malaysian problems may not be as bad as those of some other developing countries like the Philippines during the Marcos era and Indonesia.

Political fraud and corruption are by no means concentrated only in developing countries as discussed in chapter 5. They exist in developed countries like Italy and Spain. Fraud and corruption are elements that do not discriminate. As explained in chapter 5, they exist among all age groups, among both sexes, at all classes of society, at every decision-making level within all organisations, at all economic situations i.e. underdeveloped, developing or developed economies, in all social and cultural settings and at all times and era, whether there is war or peace. The problems of fraud and corruption also affect all social systems; feudalism, capitalism, communism and socialism. The only difference between fraud and corruption in different societies is the different combinations of the social, economic and political conditions which give rise to different types of opportunities conducive to their occurrences. The intensity of corruption fluctuates with these different combinations.

Myrdal, in 1970, called corrupted countries the "soft state". "The term soft state is understood to comprise all the various types of social indiscipline which manifest

themselves by: deficiencies in legislation and in particular law observance and enforcement, a widespread disobedience by public officials on various levels to rules and directives handed down to them and often their collusion with powerful persons and groups of persons whose conduct they should regulate. Within the concept of the soft state belongs also corruption" (Myrdal, 1970; 211). A soft state was characterised by the laxity and arbitrariness in the community that could be exploited for personal gain by people who had the economic, social and political power, who could afford egalitarian laws and policy measures, but were in an unchallenged position to prevent their implementation or non-implementation. This extensive discretionary control was apt to breed corruption as corrupt politicians and dishonest officials had strong vested interest in retaining and increasing control of this type. Although the opportunities for large-scale exploitation were only at the disposal of the upper class, persons quite low on the social ladder would also find such opportunities for petty gains. In such a society, there was no attempt to build up a system of community obligations. Of the South Asian countries, Myrdal said that their feature was traditional and conditioned by their history during pre-colonial and colonial times. Behind the resistance to overcome social indiscipline were also strong vested interests, mainly among the upper strata, but spread down into the masses. Corruption was part and parcel of the general condition in underdeveloped countries of their being soft states.

Myrdal's conclusion was that the fight against

corruption would succeed only to the extent to which a favourable social climate was created. Thus, there must be political and social change. Corruption must become abhorrent to the public and politicians and both must want a change in social outlook and traditions.

Caiden concluded that if there was no change, fraud and corruption would still be rampant even if the corrupt leaders were changed. "The script is changed, the actors are replaced and the scenery is altered, but the play is performed as before. The form is altered, but the behaviour continues. When this occurs bureaucratic corruption has been institutionalized. Wrong-doing is the norm. It is so regularized that the administrative system tolerates wrong-doing and actually penalizes propriety and integrity" (Caiden, 1986; 38). He also blamed the public for the corrupt actions of the politicians. He said that if the public allowed themselves to be intimidated, bullied, deceived and ignored, they would get bad Government. Likewise, the Government would get the people they deserved. If the Government intimidated, bullied, deceived and ignored people, they would get back in kind. "If the Government cheats them, they will cheat back. If the Government lies to them, they will lie back. If the Government does not identify with them, they will not identify with the Government. They will resist conscription, evade taxes, misinform and when the opportunity comes, get back at hated officialdom" (Caiden, 1986; 40).

Preventive measures can only work if the political and social system allows them to work. Moreover, these

preventive measures will be expected to be different all over the world depending on the historical, traditional and cultural make-up of the country. For example, the racial problems in Malaysia have to be dealt with so that unscrupulous politicians would not be able to make use of them for covering their corrupt acts. However, the present system of free enterprise adopted by many countries in the world, which make profit the priority before the basic needs of the people, presents a bleak prospect of political fraud ever being prevented and controlled in future. For example, during the Marcos era, the United States Government knew that Marcos was squeezing his country dry at the expense of its large population of poor people and yet, because there was money to be made through business dealings in the Philippines, it ignored the dark side of Marcos. A similar scenario can be observed when the Clinton administration decided to renew the "Most Favoured Nation" status of China in 1994 even though human rights have not improved. The only reason for doing so is because America will lose out to other countries on the business dealings with China which is going through an economic boom. The Australian Government turned a blind eye to how the Indonesians were persecuting and robbing the East Timoreans of their natural resources by signing an oil deal with the Indonesian Government. As Muzaffar pointed out, "Development has turned into devilopment. This is why it is high time we question the very system. We should look at the capitalist scale of priorities and see the connections between corruption and the system" (Aliran Monthly, January 1985).

To sum up, the basic factors that are necessary for preventing corruption are:

1.   resocialization into new attitudes which abhor corruption and fraud;
2.   commitment of both the public and the Government to fight fraud and corruption;
3.   instilling ethical consciousness in the people;
4.   an open Government;
5.   free press and expression;
6.   reduction of authoritarianism of the Government;
7.   proper use of the law and the legal system;
8.   improved administrative system and introduction of well-planned fraud and corruption controls.

Singapore, the country that is known to have the cleanest Government as explained in section 2.2 of chapter 7 has most of the factors listed above. As Quah said:

"The fact that corruption is incidental and not institutionalised in Singapore is not an accident, but the result of the determination of the PAP (People's Action Party) Government in general and Prime Minister Lee Kuan Yew in particular to eliminate the 'disease' of corruption in the country. In other words, the major reason for Singapore's success in controlling the problem of corruption is the quality of her political leaders and their commitments towards the elimination of corruption both within and outside the bureaucracy. In order to eradicate the problem of bureaucratic corruption in any country, comprehensive administrative reforms are needed. And such reforms can only succeed if the political leaders concerned lend their support and sponsorship. In other words, they must set an example by refraining from corrupt behaviour themselves" (Quah, 1978; 20).

In his book, "Hard Graft In Hong Kong", Lethbridge said the ICAC (Independent Commission Against Corruption) had

managed to bring down the rate of corruption when it started its operations was because Sir Murray MacLehose, the then Governor of Hong Kong, "sought to cleanse Hong Kong and to moralize civic life" (Lethbridge, 1985; 214). The success of the ICAC was due to the quality of its leadership over the years, the type of person it has been able to select, recruit, train and keep, or even employ temporarily, and the strong support provided by the Government (Lethbridge, 1985; 218).

In both cases mentioned above, the most important factor for a country to eradicate corruption is the quality of her leaders and the determination they have to eradicate the problem. As the saying goes, "An organisation is only as good as its personnel". Thus, a country is only as good as her leaders.

In concluding this chapter, I would like to discuss fraud and corruption in Malaysia in the near future. In doing so, it should be emphasized that most of the large-scale corruption like the BMF case and the Deposit-taking Co-operatives case were only revealed and unearthed when the recession hit the Malaysian economy in 1981-82 and again in 1985-86. The general reason is that when people have money, they are less careful and vigilant. However, when they are less well off during the recession, every penny counts.

The economic future of Malaysia seems bright at the moment. Malaysia is fast becoming an advanced nation. The Sixth Malaysia Plan announced on 10 July 1991 detailed how the Mahathir administration aimed to spend M\$104 bil. (US\$37.4 bil.) on infrastructure, social development and

defence programs to achieve the goal of being a developed country. As reported in the "Far Eastern Economic Review", the economic blue print represented the nuts and bolts of a Second Outline Perspective Plan for 1991-2000 unveiled on 17 July 1991 (FEER, 25/7/1991). Both measures provided the pragmatic foundation for a New Development Policy which replaced the New Economic Policy, a pioneer outline for national development that ran its course from 1971-90. Like the New Economic Policy, the New Development Policy concentrates on development priorities and the sensitive issue of racial quotas. All these policies are grouped loosely under the banner of what the Prime Minister calls his 20/20 vision to turn Malaysia into a fully developed nation by the year 2020. With the economy forecasted to bring a comfortable growth rate at least until mid 1990s, following average annual Gross Domestic Product growth of about 9% from 1988-90, many of the targets are likely to be met easily. With this rosy future, the dark side of fraud and corruption will be hidden for a number of years. Chapter 6 on the general data of commercial crime in Malaysia has already shown an upward trend. With the vast development being undertaken to build the country, the first group of people to gain from them, as history as shown, is the politicians. Moreover, there is no sign that the political and social system of the country is changing to accommodate the eradication of fraud and corruption although the Prime Minister has admitted in June 1994 that members of his ruling political party are corrupt (The Time, 20/6/1994). He also said that rising wealth and power among Malays and

other groups represented by UMNO, the dominant party in the Barisan Nasional that had ruled since 1957, had created "individuals who are morally decayed". With regards to allegations of vote-buying, he admitted, "We no longer choose people who are qualified and capable in terms of party leadership calibre. We choose people who offer us money or gifts or other things" (The Times, 20/6/1994).

On 24-25 May 1994, the Prime Minister and the Deputy Prime Minister announced in the Malaysian local newspapers the decision of the Government to uphold the Internal Security Act. A few changes might be made to keep up with time. The reason given was the Act had helped bring peace and stability in the country. Although the Malaysian economy is doing well at the moment, the Government cannot overrule the threat of destabilising forces in the country, for example, racial tension and religious fundamentalism.

My feeling about fraud and corruption in the future is one of pessimism. My pessimism is made worse knowing that developed countries around the world like the United States (on the incident of giving the status of "Most Favoured Nation" to China in 1994) and Britain (the Pergau Dam affair in 1994) are more interested in safeguarding their overseas trades than issues of a humanitarian kind. There is a danger, in future, of what I would call the globalisation and internationalisation of fraud and corruption (as discussed in chapter 4) where leaders of different countries may collaborate and conspire to defraud citizens of their countries in order for them to have a good life. This could also lead to an imperialism in international fraud i.e. when



a few Governments cooperate to defraud other Governments. Political fraud and corruption are all over the world and are here to stay because politicians are generally not interested in eradicating them at the expense of profits and wealth. Some politicians from different countries do collaborate directly or indirectly to defraud their ordinary citizens who have no knowledge of them taking place. If they have knowledge, it is difficult to prove or they choose to keep quiet because they do not want to run into trouble with the authorities. History has shown that political fraud and corruption have been with us for many centuries and cannot be eradicated completely. Because of these above reasons, political fraud and corruption will still be with us for many years to come. On this pessimistic note, I conclude my thesis.

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